

**UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND**

**In re KUGEL MESH HERNIA PATCH** §  
**PRODUCTS LIABILITY LITIGATION** §  
§ **MDL Docket No. 07-1842-ML**  
**THIS DOCUMENT RELATES TO** §  
**ALL ACTIONS** § **JUDGE LISI**  
§

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**MEMORANDUM OF LAW IN SUPPORT OF ASSENTED TO MOTION FOR AN  
INTERIM PAYMENT OF COMMON BENEFIT ATTORNEYS' FEES**

Pursuant to Practice and Procedure Order 22 (“PPO 22”),<sup>1</sup> Plaintiffs’ Liaison Counsel, Donald A. Migliori, moves this Honorable Court for an interim order for the payment of common benefit attorneys’ fees. The instant motion is for the disbursement of only those funds currently collected and deposited in the MDL 1842 Common Benefit Attorneys’ Fees account (“MDL Account”).<sup>2</sup>

**Background**

This Court is well-aware of the history of the Composix Kugel litigation involving Defendants Davol, Inc. and C.R. Bard, Inc. The first Composix Kugel cases were filed in federal and state courts in 2006. Since the inception of these cases, various law firms serving on the Plaintiffs’ Steering Committee (“PSC”) vigorously prosecuted these cases, dedicating significant time, resources, and energy to the development of facts through discovery, briefing, and trial preparation that benefitted all of the consolidated and coordinated federal court and state court actions. These

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<sup>1</sup> Practice and Procedure Order 22 (*In re: Kugel Mesh Hernia Patch Prods. Liab. Litig.*, No. 07-1842-ML, Dkt. No. 2382) was entered on November 20, 2009, was subsequently amended pursuant to Court Order on December 18, 2009 (Amended Practice and Procedure Order Number 22, Dkt. No. 2415), and was again amended on May 21, 2012 (Dkt. No. 3795). Unless otherwise stated, all citations to “PPO 22” in this Memorandum are to Amended Practice and Procedure Order Number 22, Dkt. No. 2415.

<sup>2</sup> As the Court is aware, a largely identical order, for common benefit fee and expense assessments, was entered in the Superior Court of Rhode Island where more than half of the Composix Kugel claims were filed. A narrower motion for interim payment of common benefit fees will be filed with the Superior Court on April 25, 2014, and is currently scheduled for hearing on May 7, 2014 at 1:00pm. Plaintiff’s Liaison Counsel will provide this Court with a courtesy copy of that motion when it is filed with the Superior Court.

firms culled and reviewed corporate documents from productions totaling close to seven million pages, conducted several dozen depositions of corporate fact witnesses and general liability experts and worked up dozens of cases for trial in the federal and state courts. There were two Compositix Kugel jury trials that went to verdict in the United States, both here in the United States District Court for the District of Rhode Island. The financial and human resources that these firms committed to this litigation over the past eight years have resulted in more than 3,000 resolutions of claims, and with this Court's assistance, the parties are well on their way to resolving the few hundred that remain.

This litigation involved thousands of claimants and numerous variations of Davol hernia products—more than a dozen sizes of product, some recalled, some not, some involving allegations of injury due to ring break, many involving buckles and malformations of products without evidence of ring break. The variations in products required careful attention and investigation into the respective variations in medicine and biomaterials science. Moreover, these products were sold throughout the United States and the world, with plaintiffs from nearly every state in the country. The Plaintiff firms involved in the litigation had to understand the variations in the applicable laws of liability and damages in each state, as well as the choice of law and conflicts of law analyses for each possible scenario, especially in the bellwether case selection process.

In many respects, this was an historic litigation. For example, this litigation was the first medical device MDL in the District of Rhode Island and, to our knowledge, it is the first time a federal magistrate judge from an MDL has presided concurrently *en banc* with a state court judge to jointly resolve common discovery disputes. Many of those discovery rulings have been utilized in other medical device litigation throughout the country as persuasive rulings on critical legal issues, including but not limited to statutes of limitations, treating physician *ex parte*

communications, and document privileges and protections, to name a few. Given the complexity of these cases, it is not hyperbolic to state that the parties and the Court covered significant ground in these consolidated and coordinated cases with respect to the applicable science, medicine and law.

The firms that devoted themselves to the common benefit of these claims did so with significant risk that there would be no payment at all. Indeed, during the Court mandated early neutral evaluation of these cases, Defendants virtually took a “no-pay” position on most every claim. Defendants subsequently defended these cases vigorously and required plaintiffs to try two cases to verdict before entering into any meaningful settlement negotiations. Even those negotiations were very slow to develop, requiring plaintiffs to work up more than a dozen other cases that resolved only on the very eve of trials.

General liability discovery literally took the parties across the country. As the Court knows, Defendants filed a multitude of discovery and pretrial motions—including *Daubert*, *Lone Pine* and *in limine* motions—that consumed thousands of hours of common benefit time. Participating plaintiff firms worked tirelessly to ensure that the cases continued to move forward. Several million dollars were spent prosecuting these cases on both sides of the litigation.<sup>3</sup>

To date, various plaintiff firms have dedicated over 80,000 common benefit hours to this litigation, which, at prevailing and customary hourly rates, would result in a lodestar that far exceeds that which remains in the MDL Account. Although less than what they would have earned at their customary rates, the firms that submitted common benefit time pursuant to PPO 22 have agreed—in full satisfaction of the services they have provided and continue to provide for the common benefit of the Composix Kugel mesh cases—to an allocation amongst

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<sup>3</sup> In considering two separate motions for the reimbursement of common benefit expenses, this Court has already ordered the reimbursement of \$2,641,165.49 to various participating law firms. *In re: Kugel Mesh Hernia Patch Prods. Liab. Litig.*, No. 07-1842-ML, Dkt. No. 4058 and Dkt. No. 4115.

themselves resulting in every instance in a substantial reduction of the value of the time each contributed to the benefit of all claims. The various firms recognize that the funds available now represent a “fractional” or “negative” multiplier of their time in the case and, yet, have assented to Plaintiffs’ Liaison Counsel filing this motion pursuant to the allocations described below.

**PROPOSED AWARD OF COMMON BENEFIT ATTORNEYS’ FEES**

Pursuant to this Court’s PPO 22, as amended, an assessment of eight percent (8%) of gross settlement funds paid to plaintiffs in connection with the Composix Kugel litigation has been set aside in the MDL Account maintained by Plaintiffs’ Liaison Counsel. As of April 23, 2014, the balance in the MDL Account is \$6,407,772.98.<sup>4</sup>

The court-appointed co-lead law firms have been collecting common benefit time since the inception of the Composix Kugel litigation approximately eight years ago. The co-lead counsel have reviewed the hours submitted and have discussed with each law firm the economics of the common benefit time submitted and the expected total recovery from court-ordered assessments. The co-lead counsel were successful at achieving agreement among all counsel as to the fair value of each firm’s common benefit time in the MDL. Below is a chart of the hours each firm submitted to the court-appointed co-lead counsel, as well as the amount in common benefit fees that each firm has agreed to accept in the MDL for its time, subject to this Court’s approval:

<b>FIRM</b>	<b>HOURS</b>	<b>PROPOSED FEE</b>	<b>BLENDED RATE</b>
Anapol Schwartz	453.55	\$75,000.00	\$165.36
Douglas & London	846.10	\$50,000.00	\$59.09
Gemma Law Associates, Inc.	289.50	\$25,000.00	\$86.36
Heninger, Garrison & Davis LLC	811.10	\$100,000.00	\$123.29
Milberg LLP	9,141.81	\$750,000.00	\$82.04
Parker Waichman LLP	432.50	\$75,000.00	\$173.41

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<sup>4</sup> To provide the Court with complete disclosure, as of April 23, 2014, the balance in the Rhode Island Superior Court Common Benefit Attorneys’ Fee Account is \$9,762,716.64. A motion for the disbursement of these common benefit fees is scheduled for hearing on May 7, 2014 at 1:00pm.

Potts Law	1,325.00	\$300,000.00	\$226.42
Reich & Binstock, LLP	1,444.25	\$150,000.00	\$103.86
The Alvarez Law Firm	7,825	\$750,000.00	\$95.85
Toriseva Law	246.50	\$36,975.00	\$150.00
Wagstaff & Cartmell	2,310.30	\$500,000.00	\$216.42
Williams Kherkher Hart Boundas, LLP	607.50	\$50,000.00	\$82.30

The variations in blended hourly rates are based on the nature of the work performed. For example, more weight has been given to firms that participated in trials as compared to firms that worked solely on document review. Each of these firms has agreed that, if the above common benefit attorneys' fees are approved, no firm will make further application to this Court for its common benefit time, but will accept this Court-ordered payment as full-and-final payment of any and all its claims for common benefit in MDL 1842.<sup>5</sup> If approved, the above-listed law firms will receive a total of \$2,861,975.00. Should the Court award the relief sought above, the amount remaining in the MDL Account would be \$3,545,797.98. The only remaining firms that would have any claims for MDL common benefit time would be the three court-appointed, co-lead law firms: Motley Rice LLC; Cory Watson Crowder & DeGaris; and Wexler Wallace LLP.

The three co-lead law firms together have accumulated more than 56,000 hours in common benefit time, themselves. The \$3,545,797.98 remaining in the MDL Account is clearly significantly less than the lodestar value of the common benefit time that these three co-lead law firms have put into the litigation over the past eight years. The three co-lead counsel law firms undertook the vast majority of all discovery, expert work and trial. The three co-lead firms have agreed, subject to court approval, to a partial payment of their MDL common benefit time using an agreed-upon formula for

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<sup>5</sup> The Alvarez Law Firm is the only firm that disputes the total value of its common benefit time in the MDL and state court cases. Co-lead counsel are willing to agree, for purposes of this motion, that the value of all Alvarez Law Firm common benefit time is \$750,000.00, but dispute any amount claimed over this award. In an effort to resolve this issue and subject to this court's approval, The Alvarez Law Firm has agreed to litigate its claims in excess of the \$750,000.00 in the Superior Court of Rhode Island. Irrespective of the state claim, the co-lead counsel and The Alvarez Law Firm agree, subject to this Court's approval, to the disbursement of \$750,000.00 for MDL common benefit time, only. The Alvarez Law Firm will not make any further application for common benefit attorneys' fees in the federal court MDL 1842.

the apportionment of the remaining common benefit fees as follows:

<b>FIRM</b>	<b>HOURS</b>	<b>PROPOSED INTERIM FEE</b>	<b>BLENDED RATE</b>
Motley Rice, LLC 55%	23,669.20	\$1,950,188.88	\$82.39
Cory Watson 25%	21,567.80	\$886,449.50	\$41.10
Wexler Wallace 20%	13,613.34	\$709,159.60	\$52.10

If and when future assessments are deposited into the MDL Account, the three co-lead firms have further agreed to rely on this pro rata apportionment in making future applications for disbursements of common benefit attorneys' fees. The co-lead counsel have also agreed to make application for common benefit fees in the state court litigation based on this same pro rata apportionment.

### **ARGUMENT**

#### **I. THE COURT SHOULD APPROVE THE FEE PETITION AS FAIR AND REASONABLE**

Plaintiffs' Counsel is entitled to fair and equitable compensation for their efforts contributing to the common benefit of all Plaintiffs in the consolidated and coordinated Compositx Kugel cases. Courts in the First Circuit and elsewhere have long recognized that a lawyer whose litigation efforts directly benefit others may recover reasonable attorneys' fees from the under the common-fund doctrine. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) ("a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole"); *In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 305 n.6 (1st Cir. 1995) ("[t]he common fund doctrine is founded on the equitable principle that those who have profited from litigation should share its costs. . . . While class actions furnish the most fertile ground for the doctrine, its reach is not limited to such cases."). This "exception to the American Rule is founded upon the principle that 'persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense,'" and is

“grounded in the equitable powers of the courts under the doctrines of quantum meruit and unjust enrichment.” *In re: All Individual Kugel Mesh Cases*, Master Docket No. PC-2008-9999, 2009 R.I. Super. LEXIS 97, \*7 (R.I. Sup. Ct. Aug. 11, 2009) (quoting *Boeing Co.*, 444 U.S. at 478).

The proper amount of attorneys’ fees that should be awarded is a matter within the sound discretion of the trial court. *See Boeing*, 444 U.S. at 478 (the common fund exception is “grounded in the equitable powers of the courts under the doctrines of quantum meruit and unjust enrichment”). *See also Blue Cross & Blue Shield v. Najarian*, 911 A.2d 706, 710 n.5 (R.I. 2006) (a court may award attorneys’ fees as an exercise of “its inherent power to fashion an appropriate remedy that would serve the ends of justice”). There are generally two methods for awarding attorneys’ fees from a common fund: 1) percentage of the fund, and 2) lodestar. *In re Thirteen Appeals*, 56 F. 3d at 307 (citing Federal Judicial Center, *Awarding Attorneys’ Fees and Managing Fee Litigation* 63-64 (1994)). Courts frequently employ the percentage of the fund method, confirming the reasonableness of the result based upon a number of factors, including a lodestar “cross-check.” *See In re Lupron Mktg. and Sales Practices Litig.*, 01-cv-10861-RGS, 2005 U.S. Dist. LEXIS 17456, \*10 (D. Mass. Aug. 17, 2005); *In re Compact Disc Minimum Advertised Price Antitrust Litig.*, 216 F.R.D. 197, 215-16 (D. Mass. 2003). Here, an analysis based on the appropriate factors demonstrates that the requested fees are more than reasonable.

**A. A Lodestar Cross-Check Confirms that the Fee Percentage is Reasonable**

As this Court (and the Rhode Island Superior Court) preliminarily found after full hearing, the eight percent (8%) assessment for common benefit attorneys’ fees is reasonable under a lodestar cross-check analysis. “[T]he lodestar approach (reasonable hours spent times reasonable hourly rates, subject to a multiplier or discount for special circumstances, plus reasonable disbursements) can be a check or validation of the appropriateness of the percentage

of funds fee.” *In re Thirteen Appeals*, 56 F.3d at 307; *In re Lupron*, 2005 U.S. Dist. LEXIS 17456, \*21. A multiplier may be applied to the lodestar to increase or decrease the fee award in response to “the risk of litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors.” *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 468 (S.D.N.Y. 2004). Importantly, a lodestar cross-check need not involve mathematical precision; a court need not scrutinize each time entry, but may instead rely on representations by counsel with respect to the total number of hours expended, and the process may “be simplified by use of a blended hourly rate.” *In re Vioxx Prods. Liab. Litig.*, 760 F. Supp. 2d 640, 659 (E.D. La. 2010).

Here, the requested award of eight percent (8%) of settlement funds is presumptively reasonable because it represents the application of a *fractional* or *negative* multiplier across the board. In fact, courts frequently apply a *positive* multiplier where litigation—as here—was resolved favorably for plaintiffs. *See, e.g., See In re Lupron*, 2005 U.S. Dist. LEXIS 17456, \*22 (lodestar cross-check revealed that counsel’s percentage of the fund request would amount to a 1.41 multiplier on the lodestar, “a reasonable bonus justified by the satisfactory outcome.”). *See also In re TJX Companies Sec. Breach Litig.*, 584 F. Supp. 2d 395, 399 (D. Mass. 2008) (multiplier of 1.97); *In re Diet Drugs Prods. Liab. Litig.*, 553 F. Supp. 2d 442, 487 (E.D. Pa. 2008) (2.6 multiplier); *Conley v. Sears, Roebuck & Co.*, 222 B.R. 181, 182 (D. Mass. 1998) (approving attorneys’ fees that would constitute a lodestar multiplier of 8.9). The lodestar cross-check demonstrates that the fee request is reasonable.

The hourly rates of the participating law firms are also independently reasonable. To determine a reasonable hourly rate, courts look to “the prevailing market rates in the relevant community.” *Andrade v. Jamestown Hous. Auth.*, 82 F.3d 1179, 1190 (1st Cir. 1996). Factors considered include “the type of work performed, who performed it, the expertise that it required,

and when it was undertaken” *Grendel’s Den, Inc. v. Larkin*, 749 F.2d 945, 951 (1st Cir.1984). Here, setting aside the interim blended rates for co-lead counsel, Plaintiffs’ Counsel’s blended hourly rates of between \$59.00 and \$226.00 are more than reasonable when compared to rates approved by courts in the First Circuit and courts overseeing complex, multi-district litigation generally. *See, e.g., Davis v. Footbridge Eng’g Servs., LLC*, No. 09CV11133-NG, 2011 U.S. Dist. LEXIS 93645, \*\*7-10 (D. Mass. Aug. 22, 2011) (approving partner rates of up to \$650, associates rates between \$350 and \$425, and paralegal rates between \$140 to \$210); *Lonardo v. Travelers Indemnity Co.*, 706 F. Supp. 2d 766, 793 (N.D. Ohio 2010) (approving attorney rates of up to \$825 and paralegal rates of up to \$215 as reasonable “considering the experience and expertise the[] particular lawyers ha[d] in [the relevant] area of law” and in light of the court’s, “knowledge of attorneys’ fees in complex civil litigation and multi-district litigation”).

Plaintiffs’ Counsel’s blended hourly rates are also reasonable when compared to the rates currently supported by the Laffey Matrix, a tool developed by the Civil Division of the Office of the U.S. Attorney for the District of Columbia in *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983), *aff’d in pertinent part*, 746 F.2d 4 (D.C. Cir. 1984), *cert denied*, 472 U.S. 1021 (1985), from an extensive survey of hourly rates charged by attorneys in Washington, D.C. metropolitan area. The Laffey Matrix is often considered by courts—both within and outside of the Washington-Baltimore geographical area—to assess the reasonableness of proposed hourly rates for attorneys. *See, e.g., Cohen v. Brown Univ.*, R.I. C.A. No. 92-197, N.H. C.A. No. 99-485-B, 2001 U.S. Dist. LEXIS 22438, \*154 (D.R.I. Oct. 18, 2001), *accepted by* 2001 U.S. Dist. LEXIS 20714 (D.N.H. Dec. 5, 2001) (using the hourly rates in the Laffey Matrix as a starting point for consideration of fair hourly rates to assign to out-of-state lawyers); *IMS Health Corp., et al. v. Schneider*, 901 F. Supp. 2d 172, (D. Me. 2012) (concluding that “extrapolating District of Columbia rates to [other geographic areas] is as reasonable as any other method” where the

Court knew of “no logical way to distinguish among the excellent professional reputations” of the lawyers and law firms involved in the litigation). Plaintiffs’ Counsel’s blended rates fall well within the hourly rates supported by the Laffey Matrix, which currently range from \$320 per hour for associates with 1-3 years of experience to \$567 per hour for partners and other attorneys with 8-10 years of experience, \$640 per hour for those with 11-19 years of experience, and up to \$771 per hour for attorneys with two or more decades of experience.<sup>6</sup> It is worth noting that even the Laffey Matrix values themselves are substantially lower than the actual market rates for many of the firms that participated in the common benefit.

**B. Additional Factors Demonstrate that the Fee Request is Reasonable**

The reasonableness of Plaintiffs’ Counsel’s fee request is also demonstrated by a number of other factors typically considered by courts, including: (i) the size of the fund created and the number of persons benefited; (ii) the skill and efficiency of the attorneys involved; (iii) the complexity and duration of the litigation; (iv) the risk of nonpayment; (v) the amount of time devoted to the case by plaintiffs’ counsel; and (vi) the awards in similar cases. *See Court Awarded Attorney Fees, Third Circuit Task Force*, 108 F.R.D. 237, 245 (3d Cir. 1985); *see also Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000) (applying factors); *In re GMC Pick-up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 819-22 (3d Cir. 1995) (same); *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000) (adopting similar factors); *In re Am. Dental Partners, Inc. Sec. Litig.*, No. 08-10119-RGS, 2010 U.S. Dist. LEXIS 35074, \*3 (D. Mass. Apr. 9, 2010) (noting that courts in the First Circuit are “not bound under the [percentage of fund] method to evaluate a fixed list of factors,” but have “extremely broad discretion in determining an appropriate fee”).

**1. The size of the fund created and the number of people who benefit.**

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<sup>6</sup> See [www.laffeymatrix.com](http://www.laffeymatrix.com).

The requested fee award is fair and reasonable in light of the significant, favorable results Plaintiffs' Counsel's commitment to the consolidated and coordinated cases has achieved. These efforts have collectively resulted in more than \$200,000,000.00 in settlement paid-to-date based on the accumulation of assessments for the benefit of thousands of Composix Kugel mesh plaintiffs.

**2. The skill and efficiency of Plaintiffs' Counsel.**

The requested fee is also appropriate given that Plaintiffs' Counsel are among the country's leading firms in litigating mass tort actions, with significant experience in actions involving medical devices. Their considerable experience and success in prosecuting and settling similar complex and multi-district litigation throughout the Country mean that they are well-versed in the legal and factual issues present in these cases. The significant settlements that have been achieved in the Composix Kugel mesh cases are a direct result of the experience, reputation, and ability of Plaintiffs' Counsel. Given the various successful outcomes achieved by Plaintiffs' Counsel, the requested fee award is fair and reasonable.

**3. The complexity and duration of the litigation.**

The complexity of the issues and the duration of the litigation further support the requested award. *See, e.g., In re Pharm. Indus. Average Wholesale Price Litig.*, No. 01-12257-PBS, 2008 U.S. Dist. LEXIS 111835, \*78 (D. Mass. Oct. 2, 2008) (award of 30% of a common fund found to be fair for litigation that took place over seven years); *Williams v. Rohm and Haas Pension Plan*, 658 F.3d 629, 636 (7th Cir. 2011) (award of 24% of a common fund found to be fair for ERISA litigation that took place over eight years). In addition to the complex legal issues involved in overcoming Defendants' motions for summary judgment, mass tort actions involving medical implants are arguably the most complex mass tort cases to litigate, given the extensive array of scientific and factual issues presented. *See, e.g., In re Orthopedic Bone Screw*

*Prods. Liab. Litig.*, No. 97-381, 2000 U.S. Dist. LEXIS 15980, \*26 (E.D. Pa. 2000) (noting complexity of legal issues in similar multi-district action). This factor also supports Plaintiffs' fee request.

#### **4. The risk of nonpayment.**

A determination of a fair fee must also include consideration of the uncertain nature of the fee, the wholly-contingent outlay of large out-of-pocket sums by Plaintiffs' Counsel, and the fact that the risk of failure and non-payment was always extremely high. When Counsel undertook representation of the Plaintiffs, there was no assurance that any fee would be received. Courts are cognizant of the fact that "[t]here are inherent, substantial risks entailed in undertaking any contingency fee action." *In re Orthopedic Bone Screw Prods. Liab. Litig.*, 2000 U.S. Dist. LEXIS 15980, \*28. Plaintiffs' Counsel were aware from the outset that they would likely have to overcome daunting difficulties, and would have to expend thousands of hours, and millions of dollars, in litigating these cases over an extended period of time before even a possibility of recovery might present itself. At the outset of this litigation, Plaintiffs' Counsel faced a number of risks: of the case being dismissed at the pretrial stage, of not prevailing at trial, or even of losing on appeal. The requested fee award is fair and reasonable in light of these significant risks undertaken on behalf of all Compositex Kugel mesh Plaintiffs.

#### **5. The amount of time devoted to these Cases.**

Plaintiffs' Counsel devoted considerable time, energy, and resources from the beginning of these cases through settlement. All of the consolidated and coordinated cases benefitted from extensive and lengthy discovery undertaken by Plaintiffs' Counsel related to two large corporations and multiple products. Moreover, Plaintiffs' Co-Lead Counsel and the PSC expended significant efforts throughout the bellwether process—a process which resulted in two bellwether trials before this Court. Discovery and trial preparation in this litigation necessitated,

among other things, taking the depositions of dozens of Defendants' employees and third parties and reviewing millions of pages of relevant documents. Plaintiffs' Co-Lead Counsel and the PSC not only researched and developed the trial theories in this litigation—they spent years tracking down the evidence necessary to prove those same theories.

And while one of the Defendants, Davol, was located in Rhode Island, this was a nationwide-litigation requiring counsel to travel to and from all corners of the country to take depositions, interview witnesses, physicians and experts, review documents, and otherwise prepare this litigation for trial. As a result, Counsel spent months away from their homes and families. Moreover, the significant investment of time required by this action necessarily precluded Plaintiffs' Counsel from working on other matters.

Throughout this entire process, Plaintiffs' Counsel litigated these cases with extreme efficiency. The bulk of the work was handled by a small number of experienced attorneys with a deep understanding of the case. Assignments were allocated so that work was performed expeditiously and in an organized manner. Repetition was completely avoided. Using their extensive experience in similar MDL actions, Plaintiffs' Counsel litigated and settled these matters quickly and competently.

#### **6. Awards in similar cases.**

As this Court previously ruled, an eight percent (8%) assessment for attorneys' fees in these cases was reasonable. This figure continues to be reasonable, as it is far below the average fee award in the First Circuit and other courts. *See, e.g., In re Puerto Rican Cabotage*, 815 F. Supp. 2d 448, 461 (D.P.R. 2011) (recent study found that the average fees awarded within the First Circuit constitute 20% of a total fund). A fee award of eight percent (8%) is particularly reasonable when compared to fee awards in other mass tort actions. *See Vincent v. Hughes Air W., Inc.*, 557 F.2d 759, 775 (9th Cir. 1977) (upholding district court's allocation of 20% of fee

fund in mass tort action); *In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 476, 485 (D.N.H. 2007) (awarding fees amounting to 14.5% of the fund); *In re Orthopedic Bone Screw Prods. Liab. Litig.*, 2000 U.S. Dist. LEXIS 15980, \*32 (“request for 12% of the principal, gross amount of the settlement, plus interest is modest, reasonable and in line with awards received in similar cases”).

### **CONCLUSION**

For the foregoing reasons, Plaintiffs’ Liaison Counsel respectfully requests that this Court enter an Order for attorneys’ fees in the amount of \$6,407,772.98 to be disbursed from the MDL Account and distributed by Plaintiffs’ Liaison Counsel in accordance with the agreed plan of allocation.

Dated: April 23, 2014

Respectfully submitted,

/s/ Donald A. Migliori

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***MDL-1842 Plaintiffs’ Liaison Counsel***

**CERTIFICATE OF SERVICE**

I, Donald A. Migliori, hereby certify that a copy of the foregoing was electronically filed. Those attorneys who are registered with the Electronic Filing System may access these filings through the Court's System, and notice of these filings will be sent to these parties by operation of the Court's Electronic Filing System.

Dated: April 23, 2014

/s/ Donald A. Migliori

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