

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

**IN RE YASMIN AND YAZ (DROSPIRENONE)
MARKETING, SALES PRACTICES AND
RELEVANT PRODUCTS LIABILITY LITIGATION**

3:09-md-02100-DRH-CJP

MDL No. 2100

The Honorable David R. Herndon

This document relates to:

All Actions

**MOTION TO ESTABLISH QUALIFIED SETTLEMENT FUND FOR YAZ
ATE SETTLEMENT PROGRAM AND TO APPOINT QSF
ADMINISTRATOR**

The members of the Negotiating Plaintiff's Counsel ("**NPC**") on behalf of all plaintiffs enrolled in the Yaz ATE Settlement Program, (collectively, "**Plaintiffs**") in order to settle claims against Bayer HealthCare Pharmaceuticals Inc. ("**Defendant**" or "**BHCP**") and the other released entities and individuals as set forth in the Master Settlement Agreement signed by the Parties on August 3, 2015 (the "**MSA**"), move this Court for an Order: (i) to establish a Qualified Settlement Fund (the "**QSF**"), (ii) to order the set-up of a QSF Award Account (the "**QSF Award Account**") and sub-accounts thereunder; (ii) to appoint Providio MediSolutions LLC ("**Providio**"), as the Qualified Settlement Fund Administrator (the "**QSF Administrator**") pursuant to the terms, conditions, and restrictions of the MSA; (iii) to appoint Deutsche Bank ("**the Bank**") as the financial institution that will hold the settlement

funds; and (iv) to approve investment vehicles for the QSF Award Account. In support of this Motion, Counsel respectfully states as follows:

1. On August 3, 2015 the NPC on behalf of the Plaintiffs and the BHCP executed the MSA. Article IV of the MSA provides that a QSF Award Account shall be established, sets forth a general methodology for establishment of various sub-accounts thereunder, sets forth requirements for the investment and preservation of the funds deposited into the QSF Award Account, directs that a QSF Administrator shall be selected to manage and disburse funds from the QSF Award Account, and directs that Deutsche Bank be selected as the depository institution for the QSF Award Account.
2. The MSA provides that the QSF: (a) will be held in a fiduciary capacity; (b) shall comply with the Treasury Regulations Section 1.468B-1 *et seq.*; (c) shall be deemed the custody of the MDL Court; and (d) shall remain subject to the continuing jurisdiction of this MDL Court until such funds are distributed in their entirety or upon further order of this Court.
3. This Court has jurisdiction over this matter as contemplated by Treas. Reg. Section 1.468B- 1(c)(1), which states in relevant part that a Qualified Settlement Fund “is established pursuant to an order of, or is approved by, the United States, any state (including

the District of Columbia), territory, possession, or political subdivision thereof, or any agency or instrumentality (including a court of law) . . . and is subject to the continuing jurisdiction of that governmental authority.”

4. Counsel have conferred with Defendant’s counsel and they have agreed to the filing of this Motion, the relief sought by the Plaintiffs, and to the Proposed Order attached hereto as Exhibit A.
5. Plaintiffs request that the Court approve Providio as the QSF Administrator. Providio possesses extensive experience administering Qualified Settlement Funds in different causes of action nationwide. Providio’s address is as follows: 5613 DTC Parkway, Suite 700, Greenwood Village, CO 80111. Providio personally submits to the jurisdiction of this Court. Upon any potential dissolution or bankruptcy of Providio, its appointment as QSF Administrator shall terminate and Counsel will seek Court approval of their nominated successor QSF Administrator.
6. The QSF Administrator shall administer the QSF Award Account pursuant to the terms of the MSA.
7. The QSF Administrator, in administering the QSF Award Account, shall establish sub accounts as follows: (a) Phase One Payment Account; (b) Phase Two Payment Account; (c) Common Benefit Fee Account (9% of the Settlement Award Payment as set forth in the MSA); and (d) Common Benefit Expense Account (2% of the

Settlement Award Payment as set forth in the MSA). The QSF Administrator may establish such other sub accounts as it deems reasonably necessary for the efficient administration and accounting of the QSF Award Account.

8. The QSF Administrator shall make payments to the Plaintiffs, Plaintiffs' Counsel, any entities asserting a claim of subrogation in accordance with the terms of the MSA and/or any entities to effect qualified assignments of any structured settlement liability or similar vehicle within the meaning of Section 130(c) of the Internal Revenue Code to the qualified assignee.
9. The QSF Administrator shall not distribute money from the Common Benefit Fee Account nor the Common Benefit Expense Account without a copy of a signed order directing same from this Court.
10. The settlement proceeds are the sole property of the QSF Award Account. No portion of the settlement proceeds shall be made available to Plaintiffs in any fashion, except as specifically set forth in the MSA or by order of this MDL Court. Until such time as monies are distributed, the Plaintiffs shall not possess any rights to demand or receive any portion of the settlement proceeds or the escrowed funds or to mortgage, pledge, or encumber the same in any manner. To the extent possible, this Motion shall be construed so as to prevent the Plaintiffs from being in constructive

receipt, as determined under federal income tax principles, of any amounts held by the QSF Award Account.

11. The QSF Administrator shall be indemnified and held harmless by the respective Plaintiffs from any claims made by any alleged lien holder, or other person or entity that attempts to assert a right of payment, reimbursement or garnishment against the QSF Award Account. Should the QSF Administrator be named as a party to, or threatened to be made a party to, any threatened, pending or completed action, suit or proceeding of any kind, whether civil, administrator or arbitative, and whether brought by or against or otherwise involving the QSF Award Account, by reason of the QSF Administrator having served in any capacity on behalf of the QSF Award Account, the QSF Administrator shall be indemnified and held harmless by the respective individual Plaintiffs against reasonable expenses, costs and fees (including attorney fees), judgment, awards, costs, amounts paid in settlement, and liabilities of all kinds incurred by QSF Administrator in connection with or resulting from such actual or threatened action, suit or proceeding; except to the extent that it is finally determined by this Court that the QSF Administrator was negligent or failed to comply with the terms of the MSA and/or the Order issued by this Court as a result of the motion herein in administering the QSF Award Account.

12. The Plaintiffs request that no bond be required, provided that all monies received by the QSF Award Account, which include all principal and interest earned thereon, shall be deposited by the QSF Administrator in an investment agency account held in custody at the Bank, for the benefit of and titled in the legal name of the QSF and invested in instruments/securities comprised of (a) United States Agency, Government Sponsored Enterprises or Treasury securities or obligations (or a mutual fund invested solely in such instruments); (b) cash equivalent securities including SEC registered money market funds and collateralized money market accounts; and/or (c) deposit and similar interest-bearing, or non-interest bearing accounts subject to Federal Depository Insurance Corporation protections as available.
13. Following the written instructions of the QSF Administrator, the Bank shall invest the QSF Award Account such that the following investment policy is implemented: (a) safety of principal; (b) zero bank liability exposure; and/or (c) the use of zero sweep disbursement accounts to ensure funds remain in custodial or fully insured accounts to avoid an impermissible risk of loss should the financial institution holding the funds fail.
14. Notwithstanding the foregoing, the Bank shall not be allowed to distribute any income or principal from the QSF Award Account except upon instructions of the QSF Administrator.

15. The NPC retains the right to remove the Bank, and may designate a replacement bank. Only upon the written consent of the NPC, after at least ten (10) business days prior written notice to Defendant, will the QSF Administrator be authorized to retain a replacement bank. In the event of such replacement, the terms and conditions of this document — including, without limitation, those addressing bond requirements, investments, and distributions from the QSF — shall apply to any such replacement bank.
16. The QSF Administrator shall not be liable for any losses as a result of investing the Deposit as directed by the Court. Any such losses shall not be recoverable from the Plaintiffs, NPC or other counsel to Plaintiffs, Defendant nor any other entities or individuals released from the underlying litigation, and such parties shall have no responsibility for the QSF Administrator's performance. Receipt and/or investment of the Deposit shall be confirmed by the QSF Administrator as soon as practicable by account statement or other reasonable method not to exceed fifteen (15) calendar days from receipt of the funds by the Bank.
17. The QSF Administrator shall be authorized to distribute all settlement sums pursuant to the terms and conditions of the MSA and the Order issued by this Court as a result of the motion herein.

18. All taxes on the income of the QSF Award Account and expenses and costs incurred in connection with the taxation of the QSF Award Account (including, without limitation, the expenses of tax attorneys and accountants) shall be paid out of the QSF Award Account, shall be considered to be a cost of administration of the settlement, and shall be paid as instructed by the QSF Administrator.
19. Within fifteen (15) calendar days following the last day of every calendar quarter or upon request, the QSF Administrator will prepare and deliver QSF Award Account Statements (“**Statements**”) to the NPC, to Defendant through its counsel, and to this Court if the Court so requests. The Statements shall include a statement of receipts, investment earnings, interest, and disbursements. The QSF Administrator shall provide the Statement no later than ten (10) business days following the request.
20. The QSF Administrator shall have the right to rely upon any affidavit, certificate, letter, order, notice, electronic mail, or other document believed by the QSF Administrator to be genuine and sufficient, and upon any other evidence believed by the QSF Administrator, in its reasonable judgment, to be genuine and sufficient, which may be provided to the QSF Administrator by Counsel and/or lien resolution administrators.

21. Upon final distribution of all monies paid into the QSF Award Account, the QSF Administrator shall take appropriate steps to wind down the QSF Award Account and thereafter be discharged from any further responsibility with respect to the QSF Award Account.
22. The QSF Administrator will obtain a Federal Taxpayer Identification Number for the QSF Award Account upon the execution of an order by this Court establishing the QSF Award Account.
23. Expenses and fees of the QSF Administrator for the administration of the QSF and QSF Award Account may be paid out of the funds deposited and held in the QSF Award Account (*see* MSA §4.02(D)).

WHEREFORE, for the foregoing reasons, the NPC respectfully requests that this Court consent to take continuing jurisdiction over the QSF and QSF Award Account as contemplated by Treasury Regulation Section 1.468B-1(c)(1), and issue an Order (attached hereto as Exhibit A) as follows:

1. Establish said QSF as a Qualified Settlement Fund within the meaning of Treasury Regulation Section 1.468B-1;
2. At the request of the NPC, appoint Providio as the QSF Administrator pursuant to the terms, conditions and restrictions of this Motion and the MSA, thereby granting the QSF Administrator the authority to conduct any and all activities necessary to

administer the QSF and QSF Award Account as described in this Motion and the MSA;

3. Authorize Providio as the QSF Administrator to effect qualified assignments of any resulting structured settlement liability or similar vehicle within the meaning of Section 130(c) of the Internal Revenue Code to the qualified assignee;
4. Authorize Providio as the QSF Administrator to invest the funds and segregate settlement funds into sub accounts as set forth in this Motion;
5. Authorize Providio as the QSF Administrator to make distributions of the settlement proceeds as set forth in this Motion;
6. Authorize Providio as the QSF Administrator, upon final distribution of all monies paid into the QSF Award Account, to take appropriate steps to wind down the QSF Award Account and thereafter discharging the QSF Administrator from any further responsibility with respect to the QSF Award Account; and
7. Authorize the deposit of the settlement funds in Deutsche Bank to be held and invested as set forth herein.

Dated: April 6, 2016

Respectfully submitted,

PLAINTIFFS' STEERING COMMITTEE

By: /s/ Roger C. Denton

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served electronically via the Court's ECF system on the 6th day of April 2016 to the following, including [Defendant's Lead and Liaison Counsel, who are charged with coordinating service for all other Defendants counsel of record]:

/s/Roger C. Denton