

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

|                            |   |  |
|----------------------------|---|--|
| _____                      | ) |  |
| IN RE: DEPUY ORTHOPAEDICS, | ) | MDL Docket No. 1:10-md-2197-DAK            |
| INC. ASR HIP IMPLANT       | ) |  |
| PRODUCTS LIABILITY         | ) |  |
| LITIGATION                 | ) | HONORABLE DAVID A. KATZ                    |
| -----                      | ) |  |
|                            | ) | <b><u>PLAINTIFFS' SETTLEMENT</u></b>       |
| This Document Relates to:  | ) | <b><u>OVERSIGHT COMMITTEE'S MOTION</u></b> |
| ALL CASES                  | ) | <b><u>FOR APPROVAL OF THE ASR</u></b>      |
| _____                      | ) | <b><u>SETTLEMENT ESCROW AGREEMENT</u></b>  |

Now comes the "Settlement Oversight Committee" (the "SOC"), and hereby moves this Honorable Court for an Order to aid in the processing and administration of the private settlement agreement entitled the ASR Settlement Agreement Between DePuy Orthopedics, Inc. and The Counsel Listed On The Signature Page Thereto dated as of November 19, 2013 ("ASR Master Settlement Agreement"). This Motion seeks an Order (1) approving the ASR Settlement Escrow Agreement dated as of April 30, 2014 ("ASR Escrow Agreement"), which has been filed under seal,<sup>1</sup> (2) determining that the Escrow Accounts and Sub-Accounts Established pursuant to the ASR Escrow Agreement are Qualified Settlement Funds within the meaning of Treasury Regulation Section 1.486B-1, and (3) clarifying that for cases enrolled in and settled pursuant to the ASR Master Settlement Agreement compliance with the provisions of an Order granting this Motion constitutes compliance with the provisions of CMO No. 13, as amended, notwithstanding any contrary or inconsistent provisions in CMO No. 13, as amended.

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<sup>1</sup>Because the ASR Escrow Agreement contains information concerning accounts, required signatures, and disbursement authorization procedures, it has been filed under to seal to safeguard the operation of the ASR Escrow Agreement.

The ASR Escrow Agreement establishes JPMorgan Chase Bank, NA as the Escrow Agent and further recognizes BrownGreer, PLC, as the Claims Processor. The ASR Escrow Agreement establishes the following Sub-Accounts: (1) the ASR Hip Administrative Expenses Fund; (2) the Escrow PART A Settlement Fund; (3) the Escrow PART B Settlement Fund; (4) the Common Benefit Fees and Expenses Fund; and (5) the Special Distribution Needs Escrow Fund.

The ASR Master Settlement Agreement and ASR Escrow Agreement establishes different accounts into which hold-back assessment amounts for common benefit fees and expenses, including administrative expenses of the ASR Master Settlement Agreement, will be collected than the funds established pursuant to Case Management Order No. 13 (amended on March 3, 2014) (CMO No. 13 and Amended CMO No. 13 are collectively referred to herein as “CMO No. 13”). The ASR Escrow Agreement, pursuant to the terms of the ASR Master Settlement Agreement, provides the following:

- To cover common benefit attorney fee awards, five percent (5%) of all amounts paid in Settlements pursuant to the ASR Master Settlement Agreement will be deposited into the Common Benefit Fees and Expenses Fund established pursuant to the ASR Escrow Agreement.
- To cover common benefit costs and expenses, including the administrative costs for the processing and administration of the ASR Master Settlement Agreement, one percent (1%) of all amounts paid in Settlements pursuant to the ASR Master Settlement Agreement also will be deposited into the Common Benefit Fees and Expenses Fund.

- The Common Benefit Fees and Expenses Fund and ASR Hip Administrative Expenses Fund shall be invested in an interest-bearing account at JP Morgan Chase Bank, NA similar to the other Sub-Accounts created pursuant to the ASR Escrow Agreement.
- The Escrow Agent for the Common Benefit Fees and Expenses Fund is JP Morgan Chase Bank, NA, similar to the other Sub-Accounts created pursuant to the ASR Escrow Agreement.
- Funds from the Common Benefit Attorney Fees and Costs shall only be disbursed pursuant to an Order issued by this Honorable Court. (ASR Escrow Agreement Section 6(o)).
- To the extent additional funds are required for the processing and administration of the ASR Master Settlement Agreement, the SOC periodically will make a motion to this Court to authorize the transfer of funds from the Common Benefit Fees and Expenses Fund to the ASR Hip Administrative Expenses Fund in order to pay the necessary and reasonable costs incurred in the operation and administration of the settlement program established by the ASR Master Settlement Agreement. Any funds remaining in the ASR Hip Administrative Expenses Fund following the administration of the settlement program will be transferred to the Common Benefit Attorney Fees and Costs Fund subject to further order of this Court.

The Escrow Accounts established pursuant to CMO No. 13, the “ASR Hip Fee Fund” and the “ASR Hip Expense Fund,” should remain open and operative until further Order of this Court. However, with respect to cases enrolled in and settled pursuant to the ASR Master Settlement Agreement, compliance with the terms of the ASR Master Settlement Agreement and the ASR

Escrow Agreement should be deemed substantial compliance with the terms and intent of CMO No. 13, as amended, without the need for any further or additional hold-backs, assessments, or deposits into the two funds created by CMO No. 13, as amended.

Dated: May 16, 2014

Respectfully submitted,

FOR SETTLEMENT OVERSIGHT COMMITTEE:

By:           /s/ Michelle L. Kranz          

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

Dated: May 15, 2014

/s/ Michelle L. Kranz

*Plaintiffs' Liaison Counsel*