

SETTLEMENT AGREEMENT

This Settlement Agreement, dated March 15, 2013 (the “Execution Date”), is entered into by and between (i) Bayer HealthCare Pharmaceuticals Inc. (“BHCP”), and (ii) the plaintiffs’ counsel listed in the signature pages hereto under the heading “Negotiating Plaintiffs’ Counsel” (“NPC”).

All capitalized terms used herein shall have the meanings ascribed to them, respectively, either where they are first used (set off in parentheses and quotations and underscored) or where they appear in Article XIII below.

RECITALS

A. This Settlement Agreement pertains to (1) *In Re: Yasmin and YAZ (Drospirenone) Marketing, Sales Practices and Products Liability Litigation*, MDL No. 2100 (the “MDL”), a federal multi-district litigation venued in the United States District Court for the Southern District of Illinois (the “MDL Court”); (2) any other federal court proceedings pertaining to actions, disputes, and claims asserted against Defendants regarding the use of drospirenone-containing oral contraceptives manufactured by Bayer or manufactured or marketed by BarrTeva (collectively, “DCOCs”), either pending in that court or removed therefrom and awaiting transfer to the MDL (collectively, the “Other Federal Court Proceedings”), and (3) *In re Yaz, Yasmin and Ocella Contraceptive Cases*, Case No. JCCP 4608 (Superior Court of the State of California, County of Los Angeles) (the “California Coordinated Proceedings”), *In re: Yaz/Yasmin/Ocella Litigation*, BER-L-3572-10 (Superior Court, Law Division, Bergen County) (the “New Jersey Coordinated Proceedings”), and *In re: Yaz/Yasmin/Ocella/Gianvi Products Liability Litigation*, September Term, 2009. No 1307 (Court of Common Pleas of Philadelphia County, Trial Division-Civil) (the “Philadelphia Court of Common Pleas Coordinated Proceeding”) pending in their respective courts (collectively, the “State Coordinating Courts”). The Gallbladder Resolution Program established pursuant to this Settlement Agreement also is open to Claimants in any and all other state court proceedings pertaining to actions, disputes, and claims asserted against Defendants regarding the use of DCOCs (together with the cases pending in the State Coordinating Courts, the “State Court Proceedings”).

B. NPC, having been duly authorized by the MDL Court or the applicable State Coordinating Court, and BHCP have agreed to establish a private settlement program to resolve certain Claims (the “Gallbladder Resolution Program” or the “Program”). The terms “Claim” or “Claims”, as the context may require, means any actions, disputes, and claims asserted against Defendants that constitute: (i) part of the MDL; (ii) part of any Other Federal Court Proceeding; or (iii) part of any State Court Proceeding, in each case alleging (in a complaint, in a Plaintiff Fact Sheet, or in both) a Gallbladder Injury (either alone or in combination with some other injury) resulting from the use of DCOCs. The Program is limited to Claims in the MDL (the “MDL Cases”), in the Other Federal Court Proceedings, and in the State Court Proceedings, as were filed prior to the Execution Date and to any such Claims that may be filed on or after the Execution Date, but prior to the Filing Deadline, as to which a Declaration of Counsel timely has been submitted. MDL Claimants, other than those alleging a VTE or ATE Injury in addition to a Gallbladder Injury, are automatically enrolled in the Program and will remain so unless they opt

out of the Program pursuant to the terms set forth in this Agreement. MDL Claimants alleging a VTE or ATE Injury in addition to a Gallbladder Injury, Federal Claimants, and State Claimants may opt into the Program pursuant to the terms set forth in this Agreement.

C. BHCP denies any liability or wrongdoing and asserts that it, and the other Defendants, have meritorious affirmative defenses to these lawsuits. This Agreement, accordingly, will not be construed as evidence of, or as an admission by Defendants of, any fault, liability, wrongdoing, or damages whatsoever.

D. This Agreement is limited to the particular facts of the specific injuries and issues involved in the Yaz/Yasmin/Ocella litigation, MDL No. 2100, and the state coordinated actions. The Parties agree and understand that this Agreement shall not be used, cited, or relied upon in any manner in any future cases or settlements without the express approval of the NPC and BHCP.

E. All sums awarded under this Agreement, however, constitute damages on account of personal physical injuries or sickness, within the meaning of §104(a)(2) of the Internal Revenue Code. There is, however, no guarantee that every person who has made a claim or filed a lawsuit will be compensated under the terms of this Agreement.

BHCP and NPC hereby agree as follows:

Article I. Program Enrollment

Section 1.01 MDL Enrollment Procedures

- (A) All Eligible MDL Claimants, as defined in Article XIII, other than those alleging a VTE or ATE Injury in addition to a Gallbladder Injury, are automatically enrolled in the Program and constitute MDL Participants unless they submit the “Notice of Intent to Opt Out Form”, contained in Appendix B-1, on or before the Opt Out Deadline, as defined in Section 1.04.
- (B) An Eligible MDL Claimant who has alleged a VTE or ATE Injury, in addition to a Gallbladder Injury, is not automatically enrolled in the Program but shall be entitled to enroll in the Program and become an MDL Participant by submitting a “Notice of Intent to Opt In Form,” contained in Appendix B-2, on or before the Opt In Deadline, as defined in Section 1.04, applicable to the Claimant. Submission of the “Notice of Intent to Opt In Form” shall be irrevocable after the Opt In Deadline applicable to the Claimant. By enrolling in the Program, any Claimant will be releasing all claims against all Defendants (including any and all Bayer Defendants), including their claims alleging a VTE or ATE Injury.
- (C) Eligible MDL Claimants who are automatically enrolled in the Program and who do not timely opt out and Eligible MDL Claimants who, pursuant to Section 1.01(B), submit a Notice of Intent to Opt In Form shall be bound by the terms of this Agreement and must submit a Claim Package

on or before the Claim Package Deadline to be eligible for an award under the Program.

Section 1.02 Federal Case Enrollment Procedures

- (A) Eligible Claimants who have Federal Cases pending in federal court other than the MDL Court, or whose cases have been removed therefrom and are awaiting transfer to the MDL, are not automatically enrolled in the Program but are eligible to participate in the Program. Such Eligible Claimants who wish to enroll in the Program and be bound by the terms of this Agreement must submit the “Notice of Intent to Opt In Form”, contained in Appendix B-2, on or before the Opt In Deadline applicable to the Claimant in the manner set forth in Section 1.04(B) below. Submission of the “Notice of Intent to Opt In Form” shall be irrevocable after the Opt In Deadline applicable to the Claimant, shall bind the Claimant submitting the form to the terms and conditions of this Agreement, and shall constitute affirmative acceptance of the jurisdiction of the Special Master and the MDL Court (or the state court where the case was filed or would have jurisdiction should the federal court where the case was filed and the MDL Court lack subject matter jurisdiction) for all matters and decisions relative to this Agreement.
- (B) Failure to timely submit a “Notice of Intent to Opt In Form” in the manner required will bar such an Eligible Claimant from potential recovery of an award under the Program.

Section 1.03 State Case Enrollment Procedures

- (A) Eligible Claimants who have State Cases pending in state court are not automatically enrolled in the Program but are eligible to participate in the Program. Such Eligible Claimants who wish to enroll in the Program and be bound by the terms of this Agreement must submit the “Notice of Intent to Opt In Form” on or before the Opt In Deadline applicable to the Claimant in the manner set forth in Section 1.04(B) below. Submission of the “Notice of Intent to Opt In Form” shall be irrevocable after the Opt In Deadline applicable to the Claimant, shall bind the Claimant submitting the form to the terms and conditions of this Agreement, and shall constitute affirmative acceptance of the jurisdiction of the Special Master and the MDL Court (or the state court where the case is pending or where jurisdiction would have been proper should the MDL Court lack subject matter jurisdiction) for all matters and decisions relative to this Agreement.
- (B) Failure to timely submit a “Notice of Intent to Opt In Form” in the manner required will bar such an Eligible Claimant from potential recovery of an award under the Program.

Section 1.04 Opt In and Opt Out Deadlines

- (A) NPC and BHCP, jointly, shall petition the MDL Court and each of the state court judges presiding over coordinated proceedings for a case management order to implement certain deadlines and other provisions of this Agreement and to provide notice of this Agreement, in the form attached hereto as Appendix A (“Implementing CMO”), as modified in the state courts to conform to state practice.
- (1) The Implementing CMO shall set forth 11:59 p.m. C.T. on the later of (x) April 29, 2013, or (y) May 29, 2013, if, on or before April 29, 2013, the Eligible Claimant has provided to the Claims Administrator a reasonable justification for requiring more than a 45-day period to opt out (as determined by the Claims Administrator in good faith), as the time and date by which MDL Claimants who elect to opt out of the Program must submit the “Notice of Intent to Opt Out Form” contained in Appendix B-1 (as applicable, the “Opt Out Deadline”).
- (2) The CMO shall also set forth 11:59 p.m. C.T. on the later of (x) April 29, 2013, (y) May 29, 2013, if, on or before April 29, 2013, the Eligible Claimant has provided to the Claims Administrator a reasonable justification for requiring more than a 45-day period to opt in (as determined by the Claims Administrator in good faith), or (z) June 18, 2013, if the Claims Administrator shall determine that, for any reason in its discretion, any Eligible Claimants need an additional twenty (20) days to opt in, as the time and date by which Eligible MDL Claimants alleging a VTE or ATE Injury in addition to a Gallbladder Injury, Federal Claimants, and State Claimants, who elect to participate in the Program, must submit the “Notice of Intent to Opt In Form” contained in Appendix B-2 (as applicable, the “Opt In Deadline”).
- (B) The “Notice of Intent to Opt Out Form” and the “Notice of Intent to Opt In Form”, as the context requires, must timely be submitted in one of the following ways:
- (1) Preferred option for submission: Online in accordance with instructions provided by the Claims Administrator. *See* www.yazofficialsettlement.com.
- or
- (2) By email to all of the following:
- (a) optinoptoutnotice@yazofficialsettlement.com (Claims Administrator);

(b) OptInOptOutNotice@shb.com (BHCP's counsel); and

(c) YazGBClaimNotice@uselaws.com (NPC);

or

(3) By United States Mail or other carrier, post-marked on or before the relevant Opt In Deadline or Opt Out Deadline, return receipt requested, to all of the following:

(a) Claims Administrator

Yaz Settlement Claims Administrator
BrownGreer PLC
P.O. Box 85006
Richmond, VA 23285-5006

and

(b) BHCP's counsel

Jeff Fields
Shook, Hardy & Bacon L.L.P.
2555 Grand Blvd.
Kansas City, MO 64108-2613

and

(c) NPC

Roger Denton
Schlichter, Bogard & Denton, LLP
100 South Fourth Street, Ste 900
St. Louis, MO 63102

Section 1.05 Eligible Claimants

(A) Only Eligible Claimants may participate in the Program. “Eligible Claimant” means all claimants (or their personal representatives) who: (a) have cases filed, as of the Execution Date, in (i) the MDL Court, (ii) any Other Federal Court Proceeding; or (iii) any State Court Proceeding, in each case alleging (in a complaint, in a Plaintiff Fact Sheet, or in both) a Gallbladder Injury (either alone or in combination with some other injury) resulting from the use of a DCOC; or (b) file and serve a case on or before March 25, 2013 (i.e., the Filing Deadline) in the MDL Court, any other federal court, or any state court, in each case alleging (in a complaint, in a Plaintiff Fact Sheet, or in both) a Gallbladder Injury resulting from the use

of a DCOC, together with a Declaration of Counsel, contained in Appendix G.

- (B) Service on BHCP of the complaint and Declaration of Counsel must be made by U.S. mail or other carrier, postmarked prior to 11:59 p.m. C.T. on March 25, 2013, return receipt requested, to:

Douglas Beck
Shook, Hardy & Bacon L.L.P.
2555 Grand Blvd.
Kansas City, MO 64108-2613

or

by email (prior to 11:59 p.m. C.T. on March 25, 2013) to:

ServeBayer@shb.com

For purposes of participation in this Agreement no other service is necessary, and Plaintiffs need not name, and may not serve, any entity other than BHCP in accordance with the procedures specified in this Section 1.05(B).

- (C) On the same date that the MDL Court posts on the CM/ECF system the Implementing CMO together with the Agreement (i.e., the Execution Date), State-Federal liaison counsel previously appointed by the MDL Court for the California Coordinated Proceedings, the New Jersey Coordinated Proceedings, and the Philadelphia Court of Common Pleas Coordinated Proceedings, or their designee(s), shall provide electronic notice to all plaintiffs in their respective jurisdictions who have filed cases alleging injury from the use of DCOCs, by transmitting this Agreement and any implementing orders. BHCP agrees to cooperate with each State-Federal liaison counsel, their designee, or the relevant NPC member(s) to provide a list of all plaintiffs' counsel in the respective jurisdictions. Any delay in providing such notice shall not extend the Filing Deadline.

Article II. Funding Obligations

Section 2.01 Settlement Funds

- (A) BHCP shall deposit into the Qualified Settlement Fund only those funds necessary for the payment of settlement awards in accordance with the terms hereof. Payments shall be made on an as needed basis within thirty (30) days of receiving a report from the Claims Administrator articulating the amount necessary to pay those Program Participants who have submitted Eligible Claims that have been approved for payment by the Claims Administrator, subject to Section 2.01(C) (such aggregate amount as is finally deposited into the Qualified Settlement Fund being referred to

herein as the “Settlement Funds”). The Claims Administrator shall make periodic reports for the purpose of directing BHCP’s obligation to make deposits into the Qualified Settlement Fund every 30 days.

- (B) NPC agree that the amount of the settlement awards and the Settlement Funds are fair and reasonable under the circumstances. The Settlement Funds shall be paid by BHCP.
- (C) The total of all settlement awards payable under this Agreement shall be subject to a cap of **Twenty Four Million Dollars (\$24,000,000.00)** (the “**Cap**”) and in no event shall the aggregate of all Settlement Funds exceed the Cap. In the event the total of all awards under this Agreement would exceed the Cap, the Claims Administrator will reduce the awards under this Agreement as follows:
 - (1) First, the total amount of awards to be paid, absent the Cap, shall be determined under this Agreement. This amount is the “Pre-Cap Total.”
 - (2) Second, if the Pre-Cap Total exceeds the Cap all awards shall be reduced proportionately by a discount factor as follows:
 - (a) The Cap will be divided by the Pre-Cap Total, resulting in the discount factor;
 - (b) Tier 1 Awards will be determined by multiplying \$3,000 by the discount factor; and
 - (c) Tier 2 Awards will be determined by multiplying \$2,000 by the discount factor.
- (D) Any term of this Agreement, or of the Qualified Settlement Fund Agreement, to the contrary notwithstanding, in no event shall BHCP, or any other Defendant, have any obligation to make payments into the Qualified Settlement Fund unless and until (i) the Qualified Settlement Fund shall have been **duly approved by the MDL Court**, (ii) the Effective Date shall have occurred, and (iii) the other requirements set forth in this Agreement have been satisfied. Further, Defendants shall have no financial obligations under this Agreement other than BHCP’s express obligations to make payments into the Qualified Settlement Fund, to pay Administrative Expenses as set forth herein, and to pay any expenses relating to motions, appeals, or audit(s) as dictated by this Agreement. **Defendants shall have no obligation to pay (or to make any payment on account of), or reimburse, any Persons for any attorneys’ fees or costs** or expenses incurred by any such Persons in connection with the Program. Defendants also shall have no responsibility for the management of the Qualified Settlement Fund or any Liability to any Persons arising from the handling of Claim Packages by the Claims Administrator.

Section 2.02 Qualified Settlement Fund

- (A) In accordance with the terms of this Agreement, the Settlement Funds shall be deposited into the Qualified Settlement Fund and shall remain the property of the Qualified Settlement Fund. The Settlement Funds within the Qualified Settlement Fund will be held in a fiduciary capacity. The Qualified Settlement Fund shall comply with the Treasury Regulations Section 1.468B-1 *et seq.* regarding taxation and tax reporting obligations. The Qualified Settlement Fund shall be deemed to be in the custody of the MDL Court. The Qualified Settlement Fund shall remain subject to the jurisdiction of the MDL Court until such Settlement Funds are distributed in their entirety or upon further order of the MDL Court.
- (B) BHCP and NPC wish to have the Qualified Settlement Fund maintained in as secure a manner as possible so that the Settlement Funds will be available to be paid to those who qualify for an award under the Program. UMB Bank is the financial institution that will hold the Settlement Funds. BHCP and NPC will consult as to the form of prudent investment vehicles to be used for investment of the funds. Once a tentative decision as to the form of investment has been made, BHCP and NPC shall jointly move the MDL Court for approval of the Qualified Settlement Fund. Any disagreement between BHCP and NPC as to the designation of the institution or the form of investment shall be resolved by the MDL Court.
- (C) The NPC is solely responsible for securing the QSF Administrator's execution and delivery of the Qualified Settlement Fund Agreement and such Person's consent to the jurisdiction of the MDL Court, acknowledging that the chosen financial institution and the QSF Administrator alone have the obligation to manage the Settlement Funds. Periodic reports shall be made to the MDL Court of the interest earned, distributions made, and other matters involving the status of administration. Its management shall thereafter be subject to review by the MDL Court.
- (D) BHCP shall in no way be responsible for the expenses of the QSF Administrator or the administration of the Qualified Settlement Fund. Said expenses, if any, may be paid out of the funds deposited and held in the Qualified Settlement Fund. BHCP shall in no way be associated with the administration of the Qualified Settlement Fund or be liable in respect of any dispute between or among any Program Participants and their respective counsel in respect of any costs, expenses, legal fees, or litigation costs to be deducted from the Qualified Settlement Fund.

Section 2.03 Tax Treatment of the Qualified Settlement Fund

- (A) Treatment. To the fullest extent allowable under applicable law, the Qualified Settlement Fund shall be treated as being at all times a

“qualified settlement fund” within the meaning of Treasury Regulation §1.468B-1. The QSF Administrator and, as required, NPC and BHCP, shall timely make such elections as are necessary or advisable to carry out the provisions of this Section, including the “relation-back election” as defined in Treasury Regulation §1.468B-1, back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulation. It shall be the sole responsibility of the QSF Administrator to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

- (B) **Tax Returns.** For the purpose of Section 468B of the Internal Revenue Code, the “administrator” shall be the QSF Administrator. The QSF Administrator shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Qualified Settlement Fund and the amounts held in the Qualified Settlement Fund including the returns described in Treasury Regulation §1.468B-2(k)(l). Such returns (as well as the election described in Section 468B) shall be consistent with Section 468B and in all events shall reflect that all taxes (including any estimated taxes, interest or penalties, or tax detriments) on the income earned by the Qualified Settlement Fund shall be paid exclusively out of the Qualified Settlement Fund, in accordance with Section 468B.
- (C) **Taxes and Tax Expenses.** All (i) federal, state, or local taxes (including any estimated taxes, interest or penalties, or tax detriments) arising with respect to the income earned on or by the Qualified Settlement Fund, including any taxes, interest penalties, or tax detriments, that may be imposed upon Defendants with respect to any income earned on or by the Qualified Settlement Fund for any period during which the Qualified Settlement Fund (or any portion thereof) does not qualify as a “qualified settlement fund” for federal or state income tax purposes (hereafter referred to as “Taxes”), and (ii) expenses and costs incurred in connection with the administration of tax matters for the Qualified Settlement Fund and the operation and implementation of this Section (including expenses of tax attorneys or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Section) (hereinafter referred to as “Tax Expenses”), shall be paid exclusively out of the Qualified Settlement Fund. The QSF Administrator shall notify NPC and BHCP in writing of the fact and amount of any such payment of Taxes or Tax Expenses out of the Qualified Settlement Fund (and any withholding pursuant to this Section).
- (D) **Cooperation.** NPC and BHCP hereto agree to cooperate with the QSF Administrator, Claims Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Section.

Section 2.04 Claims Administration Expenses

- (A) BHCP shall be responsible for paying the fees and expenses incurred by the Claims Administrator in administering the Program (the “Administrative Expenses”), except as otherwise expressly set forth in Section 5.05 below. For avoidance of doubt, BHCP shall not be responsible for paying the fees and expenses incurred by the QSF Administrator.
- (B) Within three (3) Business Days after the end of each full calendar month following the Execution Date, the Claims Administrator shall submit to BHCP, in such form and in such detail as BHCP reasonably from time to time may specify, a report (each an “Expenses Report”), itemizing and certifying a list of all Administrative Expenses incurred during such calendar month. A copy of such Expenses Report shall be made available to the NPC for review.
- (C) BHCP and each other Person incurring fees and costs shall pay the Administrative Expenses described in each Expenses Report within thirty (30) days of receipt thereof or as otherwise agreed as between that Person and the Claims Administrator.

Section 2.05 Tiers

- (A) Claim Tiers
 - (1) “Tier 1 Claim” means a completed Claim Package submitted with Supporting Documentation indicating a Cholecystectomy according to Event Records.
 - (2) “Tier 2 Claim” means a completed Claim Package submitted with Supporting Documentation indicating a diagnosis of a Gallbladder Injury according to Medical Records, but no Cholecystectomy was performed.
- (B) Award Tiers
 - (1) “Tier 1 Award” means a settlement award of up to \$3,000.00 (subject to reduction by virtue of the Cap) to be paid in respect of a Tier 1 Claim in accordance with the terms of the Agreement.
 - (2) “Tier 2 Award” means a settlement award of up to \$2,000.00 (subject to reduction by virtue of the Cap) to be paid in respect of a Tier 2 Claim in accordance with the terms of the Agreement.

Article III. Claim Package, Review and Payment

Section 3.01 Claim Package Deadline

Program Participants must submit a complete Claim Package, together with all Supporting Documentation, on or before 11:59 p.m. C.T. on the ninetieth (90th) day following the Effective Date (the “Claim Package Deadline”) or, as applicable and subject to the terms of Section 3.05 below, the Cure Deadline. Failure to submit a complete Claim Package on or before the Claim Package Deadline or Cure Deadline, as applicable, shall subject the Program Participant’s case to dismissal with prejudice upon motion by BHCP, or, if BHCP is not a Defendant in the case, any Defendant in such case, pursuant to Section 6.01 below. BHCP or the Claims Administrator will provide to the NPC the total number of Claim Packages following the Cure Deadline.

Section 3.02 Claim Package Submission

- (A) Persons who did not ingest DCOCs may not submit a separate Claim Package under the Program. All Derivative Claims must be included as a part of the Claim Package submitted by or on behalf of the DCOC user.
- (B) Claim Packages must be submitted to the Claims Administrator on or before the Claim Package Deadline in one of the following ways:
 - (1) Online in accordance with instructions provided by the Claims Administrator. *See* www.yazofficialsettlement.com; or
 - (2) By email to claimpackage@yazofficialsettlement.com (Claims Administrator); or
 - (3) By United States Mail or other carrier, post-marked on or before the Claim Package Deadline, return receipt requested, to the following:

Yaz Settlement Claims Administrator
BrownGreer PLC
P.O. Box 85006
Richmond, VA 23285-5006
- (C) The Claims Administrator shall provide regular updates to BHCP and the NPC as to the submission, review and approval process. BHCP or NPC may request copies of the Claim Package or any other documentation submitted with the Claim Package from the Claims Administrator.

Section 3.03 Supporting Documentation

- (A) A complete Claim Package must include:

- (1) A completed and signed Claim Form contained in Appendix D;
- (2) An executed Release contained in Appendix E-1;
- (3) In the event of a plaintiff who asserts a Derivative Claim in the complaint filed by the Program Participant, an executed Release contained in Appendix E-2, instead of an executed Release contained in Appendix E-1, executed by the Program Participant and by any plaintiff who asserts a Derivative Claim in the complaint filed by the Program Participant. For avoidance of doubt, a release is not required from the spouse of a plaintiff if the spouse did not assert a Derivative Claim in the complaint.
- (4) Contemporaneous **prescription records** from a pharmacy or medical facility reflecting that the Program Participant was prescribed or provided with a DCOC, it being understood that “contemporaneous prescription records” refers to records that were created at, or about, the time the prescription was written or the DCOC provided (the “Prescription Records”);
- (5) Contemporaneous **medical records** reflecting a diagnosis of Gallbladder Injury after the Program Participant was first prescribed a DCOC, as reflected in the Prescription Records, it being understood that “contemporaneous medical records” refers to records that were created at, or about, the time the diagnosis was made (the “Medical Records”);
- (6) If the Program Participant is alleging that she had surgery to **remove her gallbladder** (a “Cholecystectomy”), complete and contemporaneous records from a medical facility at which the surgery was performed, showing that the surgery was performed, it being understood that “contemporaneous records” when used to refer to Event records means records that were prepared at, or about, the time of the surgery (the “Event Records”);
- (7) The Program Participant’s assertion of a Tier 1 Claim or a Tier 2 Claim.
- (8) A Stipulation of Dismissal:
 - (a) MDL Participants must submit an executed stipulation of dismissal in the form contained in Appendix F-1 (the “MDL Stipulation of Dismissal”).
 - (b) Federal Participants must submit an executed stipulation of dismissal for federal court that abides by all applicable federal and local rules for effectuating the dismissal, with

prejudice, of the Federal Case against all Defendants (each a “Federal Stipulation of Dismissal”).

- (c) State Participants must submit an executed stipulation of dismissal for state court that abides by all applicable state and local rules for effectuating the dismissal, with prejudice, of the State Case against all defendants in the form contained in Appendix F-2, F-3 or F-4, as the context requires (each a “State Stipulation of Dismissal”), or in the form otherwise necessary to effectuate dismissal, with prejudice; and
- (9) Wire instructions for use by the QSF Administrator in connection with any settlement award to be made to such Program Participant, subject to and in accordance with the terms of this Agreement and the Qualified Settlement Fund Agreement.
- (B) To the extent Bayer has obtained through Litigation Management, Inc. (“LMI”) any medical or pharmacy record for any Program Participant, such Program Participant’s counsel shall be entitled to acquire said records from LMI at LMI’s rates in accordance with CMOs entered in the MDL.
- (C) Program Participants reserve the right to submit additional records to the Claims Administrator, beyond those that are required, if reasonably related to the Program Participant’s Gallbladder Injury.

Section 3.04 Medical Records

- (A) Program Participants are responsible for obtaining and submitting the Medical Records required for a Claim Package. Program Participants consent to review of their Medical Records and any additional records by the Claims Administrator (and those employed, or engaged by, the Claims Administrator), NPC, Defendant’s counsel, Lien resolution personnel, the Special Master, and the courts.
- (B) Defendants reserve the right to examine Medical Records submitted by Program Participants for pharmacovigilance purposes. Each Program Participant’s counsel has the right to examine their client’s records submitted by Defendants.

Section 3.05 Consideration of Claim Packages

- (A) A Claims Administrator shall be selected by BHCP subject to agreement by NPC to review all Claim Packages submitted to the Program and to determine whether a claim is an Eligible Claim entitled to payment under the terms of the Agreement. The Claims Administrator also shall determine the amount, if any, to which the Program Participant is entitled.

All fees and expenses of the Claims Administrator shall be borne by BHCP.

- (B) The Claims Administrator will review each Claim Package. The Claims Administrator shall inform the Program Participant's counsel, by email, within 90 days (unless the Claims Administrator provides notice that additional time is required) after submission of the Claim Package or, in the case of a Program Participant who fails to submit any Claim Package, within 30 days (unless the Claims Administrator provides notice that additional time is required) after the Claim Package Deadline (each a "Notice"), whether any or all of the Supporting Documentation is missing, inadequate or incomplete. Any Claim Package that cannot, or for any reason does not, include all of the required Supporting Documentation shall be considered incomplete and fails to establish an Eligible Claim, and subjects the Claimant's case to dismissal with prejudice, as described below, without compensation absent timely cure as set forth herein. The Claims Administrator will review any timely provided materials to address deficiencies within a reasonable period of time after submission of the same and will send an additional notice (each a "Second Notice") to any Program Participant's counsel whose Claim Package remains deficient.
- (C) The decision as to the completeness and adequacy of the Claim Package is in the sole discretion of the Claims Administrator, subject to the terms of Section 5.03(F) below. Failure to correct the deficiencies on or before the later of (x) the thirtieth (30th) day following the date of the Notice or (y) if the Program Participant on or before the thirtieth (30th) day following the date of the Notice has provided to the Claims Administrator a reasonable justification for requiring more than a 30-day cure period (as determined by the Claims Administrator in good faith), the sixtieth (60th) day following the date of the Notice (as applicable, the "Cure Deadline"), will result in automatic rejection of the Claim Package, and the Claims Administrator shall deliver the Release and the Stipulation of Dismissal, if provided, to BHCP, or, if BHCP is not a Defendant in the case, any Defendant in such case. BHCP, or, if BHCP is not a Defendant in the case, any Defendant in such case, may thereupon file the Stipulation of Dismissal with the appropriate court, subject to the resolution of any request for reconsideration or appeal, if permitted by this Agreement. However, BHCP, or, if BHCP is not a Defendant in the case, any Defendant in such case, shall provide a final 10 day notice to the Program Participant's counsel in writing before filing the Stipulation of Dismissal advising that if no action is taken, the Stipulation of Dismissal will be filed.
- (D) In the event that the Program Participant does not submit a Release or a Stipulation of Dismissal by the Cure Deadline, BHCP, or, if BHCP is not a Defendant in the case, any Defendant in such case, may submit a motion to dismiss the Program Participant's case with prejudice. Such motions

shall be made in accordance with Section 4.02. A Claimant may cure a deficiency relating to a Release or Stipulation of Dismissal during the pendency of a motion on a showing of good cause.

Section 3.06 Award Payment

- (A) The dollar amount of each individual Program Participant's settlement award will be determined after all Claim Packages have been reviewed (each a "Preliminary Award"), and, as necessary, again after all appeals permitted by Section 5.03(F) are resolved as to all awards, and, in the event the Pre-Cap Total exceeds the Cap, after all awards have been adjusted accordingly (each a "Final Award").
- (B) After determining the Preliminary Awards, the Claims Administrator will send notice containing the amount of the Preliminary Awards (the "Preliminary Award Notice") to BHCP's counsel and counsel for the respective individual Program Participants who submitted the Claim Package. In the event that any individual Program Participant has submitted their Claim Package pro se, the notice shall be sent directly to the individual Program Participant.
- (C) A Preliminary Award may be subject to appeal solely in accordance with the terms of Section 5.03(F) below and any Preliminary Award that is not timely appealed shall become final, subject to adjustment in the event the Pre-Cap Total exceeds the Cap.
- (D) After all Final Awards have been determined, the Claims Administrator will send notice containing the amount of the Final Awards (the "Final Award Notice") to BHCP's counsel and the respective individual Program Participants or their counsel, if any.
- (E) Final Award payments will be issued from the Qualified Settlement Fund after the resolution of any and all appeals and subject to the terms of Article VIII below and after the Claims Administrator has directed the QSF Administrator to make such payments.

Section 3.07 No Program Participant shall be entitled to any payment, other than in accordance with the terms of Section 2.01 and 3.06 above, nor shall any Program Participant be entitled to pursue any claim for any other injury allegedly resulting from the use of a DCOC, including, but not limited to, any VTE or ATE Injury. Program Participants disclaim any claim to receive any punitive, exemplary, or emotional damages and understand and agree that no payment made hereunder is or shall be deemed to be attributable to punitive, exemplary, or emotional damages.

Article IV. Special Master

Section 4.01 Special Master Appointment

For the sake of uniformity in rulings and efficiency, NPC and BHCP agree (a) to recommend to the respective courts that each court appoint Professor Stephen A. Saltzburg as Special Master for the purpose of making recommendations on certain motions to dismiss, as described in Section 4.02, and (b) to privately appoint Professor Saltzburg as Special Master for purpose of hearing appeals of the Claims Administrator's determinations, as described in Section 4.03. The individual initially appointed as Special Master, as well as any successor thereto, is referred to herein as the "Special Master." Any successor to the initial Special Master shall fulfill the same functions from and after the date of his succession and shall be bound by the determinations made by his predecessor(s) to date.

Section 4.02 Motions to Dismiss

The Special Master will (a) hear all motions to dismiss claims that fail to comply with the terms of this Agreement, and (b) recommend to the MDL Court or to the respective federal court or state court judge, as the case may be, a ruling on each of the motions to dismiss. If the Judge presiding over any specific case in which the Cure Deadline is not met has not appointed the Special Master on or prior to the Cure Deadline, any associated motion to dismiss shall be made to the presiding Judge in the jurisdiction where the case is pending.

Section 4.03 Review of Appeals from Claims Administrator Determinations

NPC and BHCP select Professor Stephen A. Saltzburg to hear appeals of the Claims Administrator's determinations as to whether a Program Participant is entitled to payment and, if so, the amount of that payment. Professor Saltzburg's rulings on these appeals are final and not further appealable. Professor Saltzburg's rulings on these appeals are separate from recommendations he makes as a Special Master on appointment from the MDL or other courts.

Section 4.04 Special Master's Costs

In the event that the Special Master shall find that a motion or appeal, or opposition thereto, is without good faith or foundation under the terms of this Agreement, the Party making such submission shall pay the costs of the Special Master for his consideration of such motion. In the absence of such a finding, BHCP shall pay the Special Master's costs.

Article V. Claims Administrator

Section 5.01 Claims Administrator Selection

(A) This Agreement is a private agreement.

- (B) At the request of BHCP and with the agreement of the NPC, BrownGreer PLC has agreed to preside over the Program as the Claims Administrator. Any successor to the initial Claims Administrator shall fulfill the same functions from and after the date of his succession and shall be bound by the determinations made by his predecessor(s) to date.
- (1) In the event that BHCP and the NPC are unable to agree upon the appointment of a mutually agreeable successor Claims Administrator, BHCP's counsel and the NPC will each present two (2) candidates to the MDL Court.
- (2) The MDL Court will, in consultation with the judges presiding over, respectively, the California Coordinated Proceedings, the New Jersey Coordinated Proceedings and the Philadelphia Court of Common Pleas Coordinated Proceedings, interview the candidates in camera to determine who will serve as the successor Claims Administrator. The order of the MDL Court will be final and non-appealable.
- (C) BHCP shall pay all fees and costs of the Claims Administrator as set forth in Section 2.04 above, subject to the terms of Section 5.05 below.

Section 5.02 Claims Administrator Liaisons

NPC and BHCP each designate the following liaisons for communicating with the Claims Administrator regarding the Program and answering any questions that the Claims Administrator may have with respect to the interpretation of any provision of this Agreement ("Claims Administrator Liaisons"):

(A) BHCP:

Douglas Beck
Shook, Hardy & Bacon L.L.P.
2555 Grand Blvd.
Kansas City, MO 64108-2613
dbeck@shb.com
Phone: (816) 474-6550

and

Jeffery Fields
Shook, Hardy & Bacon L.L.P.
2555 Grand Blvd.
Kansas City, MO 64108-2613
jfields@shb.com
Phone: (816) 559-2266

(B) NPC:

Michael S. Burg
Burg Simpson Eldredge Hersh & Jardine, P.C.
40 Inverness Drive East
Englewood, CO 80112
Phone: (303) 792-5595
Fax: (303) 708-0527
yazgbnotice@burgsimpson.com

Michael A. London
Douglas & London, P.C.
111 John Street
Suite 1400
New York, NY 10038
Phone: (212) 566-7500
Fax: (212) 566-7501
mlondon@douglasandlondon.com

Richard D. Meadow
The Lanier Law Firm
126 East 56th Street
New York, NY 10022
Phone: (212) 421-2800
Fax: (917) 546-0464
rdm@lanierlawfirm.com

Daniel S. Robinson
Robinson Calcagnie Robinson Shapiro Davis, Inc.
19 Corporate Plaza Drive
Newport Beach, CA 92660
Phone: (949) 720-1288
Fax: (949) 720-1292
drobinson@rcrlaw.net

and

Michael M. Weinkowitz
Levin Fishbein Sedran & Berman
510 Walnut Street
Suite 500
Philadelphia, PA 19106
Phone: (215) 592-1500
Fax: (215) 592-4663
YazGBNotice@lfsblaw.com

Section 5.03 Responsibilities and General Authority

- (A) The Claims Administrator must uphold the responsibilities for claim administration, review, and adjustment set forth in this Agreement as well as any additional responsibilities, if any, set forth in any subsequent amendments to this Agreement.
- (B) The Claims Administrator shall have the authority to perform all actions, to the extent not expressly prohibited by, or otherwise inconsistent with, any provision of this Agreement, deemed by the Claims Administrator to be reasonably necessary for the efficient and timely administration of this Agreement. For the avoidance of doubt, the Claims Administrator shall not serve as the QSF Administrator under the terms of the Qualified Settlement Fund Agreement.
- (C) The Claims Administrator may create administrative procedures, supplementary to (and not inconsistent with) those specified herein or in the Appendices hereto, that provide further specific details about how the Program is to be administered, and/or other aspects of the Program; provided, however, that such procedures comply, or otherwise are not in conflict, with the terms of this Agreement, and to which NPC and BHCP agree.
- (D) Without limitation of the foregoing, the Claims Administrator shall have the authority to modify and/or supplement the Claim Form to provide for more efficient administration of the Program, provided that (i) such changes may not materially alter the substance of such form without the consent of BHCP and the NPC, (ii) no change shall be made in the form of Release or form of Stipulation of Dismissal without BHCP's and the NPC's prior written consent, and (iii) no Program Participant who previously completed an earlier iteration of the Claim Form shall be required to submit the new Claim Form.
- (E) For cases filed and served in the MDL as of the Filing Deadline, the Claims Administrator shall notify the counsel of record for each case as to whether the claim has been automatically opted into the Program or has not been automatically opted into the Program. Such notice shall be provided within twenty (20) days after the Filing Deadline by a method selected by the Claims Administrator as the most efficient. If there is more than one counsel of record on the complaint, the notice shall be given to the counsel listed first. If the claimant is pro se, notice shall be provided directly to the pro se claimant by first class mail.
- (F) The Claims Administrator will determine whether a claim is an Eligible Claim entitled to payment under the terms of this Agreement. The Claims Administrator also will determine the amount, if any, to which the Program Participant is entitled. If the Claims Administrator determines

that a claim is not an Eligible Claim entitled to payment, or if a Program Participant disputes the amount to which the Program Participant is entitled under this Agreement, the Program Participant may seek reconsideration by filing a request for reconsideration with the Claims Administrator within ten (10) days of receiving the Notice, the Second Notice, or the Preliminary Award Notice, as applicable. The Claims Administrator will respond to any such request for reconsideration within fourteen (14) days (unless the Claims Administrator provides notice that additional time is required). The Claims Administrator's response to any request for reconsideration as to (y) whether a claim is an Eligible Claim entitled to payment or (z) the amount to which a Program Participant with an Eligible Claim is entitled under this Agreement shall be subject to appeal by the Program Participant only to Professor Saltzburg. (A Program Participant may not appeal the Claims Administrator's initial determination as to whether a claim is an Eligible Claim or the amount to be paid, if any, and may only appeal the Claims Administrator's response to a request for reconsideration. If the Program Participant fails to timely file a request for reconsideration, no appeal may be brought.) Notice of any permitted appeal (each a "Notice of Appeal") must be sent to Professor Saltzburg within fifteen (15) days from the date of the Claims Administrator's response to the request for reconsideration. Professor Saltzburg's consideration of any such appeal shall be limited to the record evidence that was before the Claims Administrator. Professor Saltzburg must render a decision within thirty (30) days of receipt of the appeal. The losing party following any such appeal (BHCP or the appealing Program Participant, as applicable) shall be required to pay the costs of Professor Saltzburg in considering the appeal in the fixed amount of \$500. The decision of Professor Saltzburg shall itself be final, binding and non-appealable (i.e., it shall not be subject to further appeal, either within the Program or to any court or arbitrator). If a Program Participant fails to timely request reconsideration or to meet the Notice of Appeal deadline set forth herein, as applicable, the Program Participant's right to appeal shall be extinguished and the Claims Administrator's decision shall be final, binding and non-appealable.

Section 5.04 Liability of Administrative Personnel

No Claims Administrator, or employee or agent of any Claims Administrator, shall be liable to any Eligible Claimant, Program Participant, or their respective counsel for his acts or omissions, or those of any agent or employee of any Claims Administrator, in connection with the Program except, with respect to each such Person, for such Person's own willful misconduct. Nothing in this Section 5.04 confers on any Eligible Claimant, Program Participant, or their respective counsel any privity of contract with, or other right to institute any action against, any Claims Administrator. In the event that the Claims Administrator must comply with any discovery obligations related to its work under this Agreement, the

requesting party bears the cost of complying with such discovery obligation and such work and costs are expressly excluded from this Agreement.

Section 5.05 BHCP/NPC Audit Right

- (A) BHCP and the NPC shall each have the absolute right and discretion at any time or from time to time, but at its own expense, to itself conduct, or have conducted by an independent auditor, audits to verify Claim Packages submitted by Program Participants or any aspect thereof; such audits may include individual Claim Packages or groups of Claim Packages. To this end, each Party shall have the right to submit additional records that it has gathered on individual Program Participants that are reasonably related to the Program Participant's Gallbladder Injury. For any such additional records the submitting Party shall provide full copies to the other Party. The Claims Administrator shall fully cooperate with any such audit.
- (B) BHCP or the NPC shall notify the other (and the Claims Administrator) of any audit that it is conducting or having conducted pursuant to Section 5.05(A) and which Claim Packages (if any in particular) are to be audited.
- (C) With respect to Claim Packages which are selected for audit:
 - (1) The Party requesting the audit may require that the relevant Program Participant provide it with (i) identification of and authorizations for the release of all relevant Medical Records from all relevant general practitioners, family physicians, primary care providers, internists, prescribing physicians, pharmacies, treating gynecologists, treating obstetricians, surgeons, and inpatient or outpatient hospitals or any other relevant healthcare providers who, at any time during the three-year period prior to, or the one-year period after, the date of the alleged Gallbladder Injury that is the basis of such Program Participant's Claim, rendered any medical care to and/or were consulted by the Program Participant for such Claim, and (ii) such other relevant records or other documentation within the Program Participant's (or her counsel's) custody, possession, or control as may reasonably be requested by BHCP (including a signed copy of the retainer agreement, redacted to remove all information other than information sufficient to show the identity of the client, firm, litigation, and date the retainer agreement was executed, between any Program Participant and her counsel whose case had not been filed on or before the Execution Date) or the NPC.
 - (2) The Party requesting the audit shall be responsible for the costs of the same. Further, as between BHCP and the NPC, the Party requesting the audit shall at its sole cost and expense provide to the

other Party copies of any information and documentation received pursuant to subclause (1) above.

- (3) If the Program Participant fails or refuses to provide any material records or other documentation (reasonably available to such Program Participant or her counsel) after being afforded an adequate opportunity to do so, then Section 5.05(E)(1), (2), and (3) shall be applied to such Program Participant and her Claim.

- (D) If following completion of its audit of a Claim Package, BHCP or the NPC is of the view that any reasonable indicia of deception, dishonesty, or fraud relating to any Claim Package or in any way to the Program exist, BHCP or the NPC, as the case may be, may petition the Special Master (or, if in a jurisdiction where the Special Master has not been appointed, the court where the case was filed) under seal, with copies being provided to Program Participant's counsel (or, if pro se, to the Program Participant) and BHCP's counsel or NPC (depending on who may file) pursuant to Section 12.01. All initial filings shall be in the MDL Court unless the MDL Court lacks subject matter jurisdiction in which case the motion shall be filed in the court in which the case was filed. Any ruling of the Special Master may be appealed to the MDL Court or, should the MDL Court lack subject matter jurisdiction, to the court in which the case was filed.

- (E) Without limitation of Section 5.05(D) and any term in this Agreement to the contrary notwithstanding, in the event that the Special Master, upon motion by the Claims Administrator, BHCP, or the NPC, determines that a Program Participant, or counsel for such Program Participant, has used, or that there is substantial evidence that a Program Participant, or counsel for such Program Participant, has used deception, dishonesty, or fraud in connection with the Claim of such Program Participant:

- (1) such Program Participant's Claim shall be denied and such Program Participant immediately shall cease to have any further rights under the Program, but such Program Participant's Stipulation of Dismissal and Release shall be delivered to BHCP, or, if BHCP is not a Defendant in the case, any Defendant in such case (and, without limitation, BHCP, or, if BHCP is not a Defendant in the case, any Defendant in such case, shall be free to file or cause to be filed such Stipulation of Dismissal and/or Release in any relevant action or proceeding);
- (2) each of such Program Participant (if the Special Master makes such determination in respect of such Program Participant) and such counsel (if the Special Master makes such determination in respect of such counsel) shall fully be liable (i) for the costs and expenses (including legal costs and expenses) incurred by the

Claims Administrator, BHCP and/or the NPC in connection with any related audit and/or any related proceedings (including MDL Court, or other court, proceedings) under this Section 5.05 and (ii) if applicable, to repay to BHCP any Final Award previously paid to or with respect to such Program Participant (and any such repayment of such Settlement Payment in whole or in part shall be disregarded for purposes of Article II); and

- (3) such Program Participant, such counsel and/or such counsel's other Program Participants shall be subject to such further sanctions or other penalties as the Special Master may impose, including (i) in the case of such counsel (and/or such counsel's other Program Participants), raising the level of scrutiny of (including conducting audits), modifying the timing of the review of, and/or requiring such counsel to pay the costs and expenses associated with any future audits of, any other Claim of any or all of the other Program Participants for which it is counsel, (ii) suspension of any Final Award payments to all other Program Participants of such counsel until such time as may be determined by the applicable court, or (iii) referral of the matter to the United States Attorney or other appropriate law enforcement officials, provided that no such further sanctions or other penalties shall affect the status of any other Program Participant or its Claim unless such sanction or other penalty is consented to by BHCP and the NPC.

- (F) All audits shall be initiated in good faith.

Article VI. Dismissals, Disclaimers, and Releases

Section 6.01 Dismissals

(A) MDL Cases Subject to Automatic Enrollment

- (1) Defendants are entitled to dismissal with prejudice of all MDL Cases that are subject to automatic enrollment in the Program, and that do not opt out of the Program, as set forth above, in accordance with the following schedule:

Circumstance	Timing of Dismissal
Does not submit or untimely submits “Notice of Intent to Opt Out Form,” and fails to submit a complete Claim Package by the Cure Deadline	BHCP, or, if BHCP is not a Defendant in the case, any Defendant in such case, is entitled to file with the MDL Court the Stipulation of Dismissal submitted with the Claim Package at any time following the Cure Deadline or if the deficiency relates to the Stipulation of Dismissal, BHCP, or, if BHCP is not a Defendant in the case, any Defendant in such case, is entitled to move to dismiss the Claimant’s case with prejudice following the Cure Deadline, in each case subject to the resolution of any request for reconsideration, and/or appeal, if permitted by this Agreement. <i>See, e.g.,</i> Sections 3.01, 3.05 and 5.03.
Submits Claim Package, but Program Participant is not entitled to a settlement award Or Submits completed Claim Package and is entitled to a Final Award	BHCP, or, if BHCP is not a Defendant in the case, any Defendant in such case, is entitled to file with the MDL Court the Stipulation of Dismissal submitted with the Claim Package at any time following the Claims Administrator’s determination of the Final Award or determination that the Claimant is entitled to no award, subject to the resolution of any request for reconsideration, and/or appeal, if permitted by this Agreement. <i>See, e.g.,</i> Sections 3.05, 3.06, and 5.03.

(B) Other Federal Cases, and MDL Cases not Subject to Automatic Enrollment

- (1) Defendants are entitled to dismissal with prejudice of all Federal Cases pending in federal court other than the MDL Court, and all MDL Cases, that are not subject to automatic enrollment in the Program and that opt in to the Program, as set forth above, in accordance with the following schedule:

Circumstance	Timing of Dismissal
<p>Timely submits “Notice of Intent to Opt In Form,” and fails to submit a complete Claim Package by the Cure Deadline</p>	<p>BHCP, or, if BHCP is not a Defendant in the case, any Defendant in such case, is entitled to file with the relevant court the Stipulation of Dismissal submitted with the Claim Package at any time following the Cure Deadline or if the deficiency relates to the Stipulation of Dismissal, BHCP, or, if BHCP is not a Defendant in the case, any Defendant in such case, is entitled to move to dismiss the Claimant’s case with prejudice following the Cure Deadline, in each case subject to the resolution of any request for reconsideration, and/or appeal, if permitted by this Agreement. <i>See, e.g.,</i> Sections 3.01, 3.05 and 5.03.</p>
<p>Submits Claim Package, but Program Participant is not entitled to a settlement award</p> <p>Or</p> <p>Submits Claim Package and is entitled to a Final Award</p>	<p>BHCP, or, if BHCP is not a Defendant in the case, any Defendant in such case, is entitled to file with the relevant court the Stipulation of Dismissal submitted with the Claim Package at any time following the Claims Administrator’s Final Award determination or determination that the Claimant is entitled to no award, subject to the resolution of any request for reconsideration and/or appeal, if permitted by this Agreement. <i>See, e.g.,</i> Sections 3.05, 3.06, and 5.03.</p>

(C) State Cases

- (1) Defendants are entitled to dismissal with prejudice of State Cases that opt in to the Program, as set forth above, in accordance with the following schedule:

Circumstance	Timing of Dismissal
Timely submits “Notice of Intent to Opt In Form,” and fails to submit a complete Claim Package by the Cure Deadline	BHCP, or, if BHCP is not a Defendant in the case, any Defendant in such case, is entitled to file with the relevant court the Stipulation of Dismissal submitted with the Claim Package at any time following the Cure Deadline or if the deficiency relates to the Stipulation, BHCP, or, if BHCP is not a Defendant in the case, any Defendant in such case, is entitled to move to dismiss the Claimant’s case with prejudice following the Cure Deadline, in each case subject to the resolution of any request for reconsideration, and/or appeal, if permitted by this Agreement. <i>See, e.g.</i> , Sections 3.01, 3.05 and 5.03.
Submits Claim Package, but Program Participant is not entitled to a settlement award Or Submits Claim Package and is entitled to a Final Award	BHCP, or, if BHCP is not a Defendant in the case, any Defendant in such case, is entitled to file with the relevant court the Stipulation of Dismissal submitted with the Claim Package at any time following the Claims Administrator’s Final Award determination or determination that the Claimant is entitled to no award, subject to the resolution of any request for reconsideration, and/or appeal, if permitted by this Agreement. <i>See, e.g.</i> , Sections 3.05, 3.06, and 5.03.

Section 6.02 Disclaimers

- (A) Program Participants and Defendants are bound by decisions made by the Special Master and/or the Claims Administrator, including ones with which they may disagree. This eventuality is part of the Program and is accepted by Program Participants, subject to the limited right of appeal set forth above in Section 5.03(F).

- (B) Program Participants disclaim any claim to receive any punitive or emotional damages and understand and agree that no payment made hereunder is or shall be deemed to be attributable to punitive or emotional damages.

Section 6.03 Releases

In summary and as fully reflected in the Release, as consideration for Defendants entering into this Agreement, Program Participants unconditionally release whatever rights they have or may have against Defendants, their agents, servants, employees, officers and directors, and all health care professionals, health care providers, health care facilities, pharmacies and other distributors of DCOCs, and all of these individuals and entities, parents and subsidiaries, affiliates, agents, attorneys, servants, employees, officers and directors, and those who acted in concert with them together with their respective insurers.

Article VII. Court Approval and Other Documentation

Section 7.01 Survival and Wrongful Death Claims

If required by applicable state law, a Program Participant's counsel or a Person authorized by a Program Participant's counsel will seek court approval of the settlement of the case brought on behalf of a decedent or others authorized under applicable state law to advance survival or wrongful death claims. Program Participants' counsel will assume responsibility for all necessary filings relating to notice and approval of the settlement and the Program Participants will be responsible for all associated costs and expenses.

Section 7.02 Claims Involving Minors

If required by applicable state law, a Program Participant's counsel or a Person authorized by a Program Participant's counsel will seek court approval of the settlement of the case brought on behalf of a minor. Program Participants' counsel will assume responsibility for all necessary probate and guardianship filings, all filings relating to court approval of settlement, and all issues or rulings arising therefrom or related thereto.

Section 7.03 Other Documents

BHCP and Program Participants agree to cooperate in acquiring or executing any other documents necessary to finalize an individual Program Participant's settlement.

Article VIII. Liens

Section 8.01 Medical Bills, Liens, and Other Potential Rights for Reimbursement

Subject to the terms of Section 2.01, BHCP shall deposit into the Qualified Settlement Fund amounts necessary to pay those Program Participants who have submitted Eligible Claims that have been approved for payment by the Claims Administrator. Each Program Participant and her counsel agree that an amount equal to the total determined in accordance with Section 8.01(B)(3)(d) and Section 8.01(C)(2)(c)-(C)(2)(e), as each such Section may apply, will be withheld from the Program Participant's Final Award and maintained within the Qualified Settlement Fund. The funds withheld from the Program Participant's Final Award in accordance with the foregoing sentence shall only be released from the Qualified Settlement Fund to the Program Participant (a) when there is a final and binding agreement between the Program Participant and the Governmental and/or Private Payors that provides for a full release of any and all entities, including the Released Parties, by all such Payors with regard to the Program Participant or (b) to the extent the total amount withheld is reduced by applying the calculations in accordance with Section 8.01(B)(3)(d) and Section 8.01(C)(2)(c)-(C)(2)(e), as each may apply. The funds withheld in the Qualified Settlement Fund may be paid from the Qualified Settlement Fund directly to the Governmental and/or Private Payor at the direction of the Program Participant to the extent of such Payor's interests.

(A) Responsibility for Satisfaction of All Medical Expenses and Liens

- (1) Each Program Participant agrees that it is her sole responsibility to pay, have paid or otherwise discharge and satisfy all past and present bills, costs, or Liens resulting from or arising out of the Program Participant's alleged injury from use of DCOCs. Each Program Participant agrees that the Released Persons shall have no responsibility to pay or have paid any future bills, costs, or Liens resulting from or arising out of the Program Participant's alleged use of DCOCs. Each Program Participant further represents and warrants that she will not seek from any Released Person any compensation for any future bills, costs, or Liens resulting from or arising out of the Program Participant's alleged use of DCOCs. Each Program Participant agrees that the Released Persons shall have no responsibility whatsoever for satisfaction of any and all Liens, of any kind, that arise from or are related to payments made or services provided to such Program Participant, or on such Program Participant's behalf, and past, present, or future bills, costs or Liens incurred in connection with the claims asserted by such Program Participant related to such Program Participant's alleged use of DCOCs. Further, each Program Participant agrees that the Released Persons shall have no responsibility to pay or have paid any bills, costs or expenses arising out of or in

connection with the actions of the Lien Resolution Firm or the Private Lien Resolution Program contemplated by this Agreement.

- (2) Each Program Participant shall indemnify, repay and hold the Released Persons harmless from any and all such bills, costs or Liens, known or unknown, and whether existing as of the date of becoming a Program Participant or arising thereafter. Specifically, and without limitation, if any governmental entity, or anyone acting on behalf of any governmental entity, seeks penalties, damages, multiple damages (including double damages), or any other amounts from any Released Person relating to payments by such governmental entity, or anyone acting by contract or otherwise on behalf of such governmental entity, arising from or relating to the Program Participant's alleged use of DCOCs, then the Program Participant shall indemnify, repay, and hold the Released Persons harmless from any and all such penalties, damages, claims, and rights to payment, including any attorneys' fees, from such entities.

(B) Procedure Regarding Payments by Governmental Payors

With respect to potential payments made on a Program Participant's behalf by Medicare, a Medicare intermediary or carrier; any other federal or state government, agency or entity; or any other entity operating under contract with any of the previously mentioned entities (collectively "Governmental Payors"), then as **CONDITIONS PRECEDENT** to the distribution of any Final Award from the Qualified Settlement Fund to the Claimant, each Program Participant and her counsel agree as follows:

- (1) Identification of Governmental Payors. Each Program Participant and her counsel agree to identify every Governmental Payor that may have made any payments on behalf of such Program Participant in any way related to such Program Participant's alleged use of DCOCs from the time the Program Participant alleges she first suffered injury from the alleged use of DCOCs through the Execution Date. Each Program Participant and her counsel represent and warrant they will use best efforts and reasonable diligence to identify such Government Payors.
- (2) Notice of Settlement. Each Program Participant and her counsel agree to provide BHCP's attorneys, either directly or through the Lien Resolution Firm, a copy of a letter or other communication notifying each Governmental Payor identified pursuant to Section 8.01(B)(1) that: (i) a claim related to the Program Participant's alleged use of DCOCs has settled; and (ii) requesting a written response indicating whether each Governmental Payor holds any interest, including liens and subrogation interests, related in any

way to such Program Participant's alleged use of DCOCs and the claimed amount of any such interest.

- (3) Satisfaction of Governmental Payors' Interests. Each Program Participant and her counsel agree, either directly or through the Lien Resolution Firm, to provide to BHCP's counsel written documentation demonstrating that each Governmental Payor identified pursuant to Section 8.01(B)(1) either:
- (a) holds no interest, including any Liens, in the Final Award; or
 - (b) expressly releases any and all entities from any liability whatsoever for any interest, including any Liens, in the Final Award; or
 - (c) agrees any interest, including any Liens, in the Final Award has been finally and completely satisfied; or
 - (d) has reached a binding agreement with the Program Participant setting forth in detail a specific dollar amount or percentage of the Final Award that the Governmental Payor agrees is the maximum amount it will seek from any and all Persons to fully and finally resolve any interest, including any Liens, in the Final Award.

For the avoidance of doubt, the CONDITION PRECEDENT in this Section is not a CONDITION PRECEDENT to BHCP's funding obligations into the Qualified Settlement Fund under Section 2.01 but is only a CONDITION PRECEDENT to the distribution of any funds withheld from the Program Participant's Final Award from the Qualified Settlement Fund to the Program Participant.

(C) Procedure Regarding Payments by Private Payors

With respect to potential payments made on a Program Participant's behalf by any for profit or not for profit, non-governmental healthcare plan, health insurer, managed care organization, labor union welfare plan, joint union and employer welfare plan, self-funded employer plan or any other non-governmental organization, including any entity operating under a contract with any of the foregoing (collectively "Private Payors"), then as CONDITIONS PRECEDENT to the distribution of any Final Award from the Qualified Settlement Fund to the Claimant, each Program Participant and her counsel agree as follows:

- (1) Identification of Private Payors. Each Program Participant and her counsel agree to identify every Private Payor that may have made any payments on behalf of such Program Participant in any way

related to such Program Participant's injury from the alleged use of DCOCs from the time the Program Participant alleges she first suffered injury from the alleged use of DCOCs through the Execution Date. Each Program Participant and her counsel represent and warrant they will use best efforts and reasonable diligence to identify such Private Payors.

- (2) Satisfaction of Private Payors' Interests. Each Program Participant and her counsel agree to comply with the requirements of one of the five options below relating to protecting the interests of Private Payors:
- (a) Option 1: Each Program Participant and her counsel agree to satisfy each and every requirement of Section 8.01(B) above with respect to all Private Payors identified pursuant to Section 8.01(C)(1).
 - (b) Option 2: If the Program Participant and each and every Private Payor identified pursuant to Section 8.01(C)(1) participate in the The YAZ Products Liability Litigation Private Lien Resolution Program administered by the Garretson Resolution Group ("PLRP"), then no amount needs to be withheld for payment of the Private Payors.
 - (c) Option 3: If a Program Participant participates in the PLRP but at least one of the Private Payors identified pursuant to Section 8.01(C)(1) does not participate in the PLRP ("Non-Participating Private Payor") and the Program Participant provides notice of this settlement as set forth in Section 8.01(B)(2) to each such Non-Participating Private Payor, then such Program Participant and her counsel agree: (1) 30% of the gross settlement proceeds shall be withheld in the Qualified Settlement Fund; (2) the 30% shall be released 45 days after notice is given unless any Non-Participating Private Payor asserts a right to a portion of the settlement proceeds during these 45 days; and (3) if any Non-Participating Private Payor asserts a right to a portion of the settlement proceeds during these 45 days, the 30% shall be released only when the Program Participant has reached a binding agreement with such Non-Participating Private Payors as set forth in Section 8.01(B)(3)(d). If all such Non-Participating Private Payors agree to participate in the PLRP, then the procedures set forth in Section 8.01(C)(2)(b) shall govern.
 - (d) Option 4: If a Program Participant participates in the PLRP but at least one of the Private Payors identified pursuant to

Section 8.01(C)(1) is a Non-Participating Private Payor and the Garretson Resolution Group provides a “generic notice” to such Non-Participating Private Payors, which notice is provided without any identifying information about the Program Participant but states that at least one of the Private Payors’ insureds has settled a claim related to the insureds’ alleged use of DCOCs and that a PLRP has been established, then such Program Participant and her counsel agree: (1) 30% of the gross settlement proceeds shall be withheld in the Qualified Settlement Fund; (2) the 30% shall be released 120 days after generic notice is given unless any Non-Participating Private Payor asserts a right to a portion of the settlement proceeds during these 120 days; and (3) if any Non-Participating Private Payor asserts a right to a portion of the settlement proceeds during these 120 days, the 30% shall be released only when such Program Participant has reached a binding agreement with such Non-Participating Private Payors as set forth in Section 8.01(B)(3)(d). If all such Non-Participating Private Payors agree to participate in the PLRP, then the procedures set forth in Section 8.01(C)(2)(b) shall govern.

- (e) Option 5: If a Program Participant does not participate in the PLRP and refuses to give notice to each and every Private Payor identified pursuant to Section 8.01(C)(1), then such Program Participant and her counsel agree: (1) 30% of the gross settlement proceeds shall be withheld in the Qualified Settlement Fund; (2) the 30% shall be released two years from the date such Program Participant’s Release is executed unless any Private Payor asserts a right to a portion of the settlement proceeds during these two years; and (3) if any Private Payor asserts a right to a portion of the settlement proceeds during these two years, the 30% shall be released only when the Program Participant has reached a binding agreement with such Private Payors as set forth in Section 8.01(B)(3)(d).
- (f) Option 6: If a Program Participant did not have a Private Payor or governmental benefits that paid for her treatment, she shall provide an affidavit stating so. The result of submitting such an affidavit shall be that the entire amount of the award shall be released upon receipt of the affidavit by the Claims Administrator.

For the avoidance of doubt, the CONDITION PRECEDENT in this Section is not a CONDITION PRECEDENT to BHCP’s funding obligations into the Qualified Settlement Fund under Section 2.01 but is

only a CONDITION PRECEDENT to the distribution of any funds withheld from the Program Participant's Final Award from the Qualified Settlement Fund to the Program Participant.

Section 8.02 Attorney Liens

Each Program Participant shall represent and warrant that all legal expenses, bills, costs or contingency fee agreements resulting from or arising out of representation of such Program Participant by any attorney in relation to such Program Participant's alleged use of DCOCs **have been paid or will be paid out of the Final Awards** and are the Program Participant's responsibility to pay, and that any Liens based on any legal expenses, bills, costs or contingency fee agreements incurred as a result of the Program Participant's alleged use of DCOCs will be satisfied by such Program Participant. Each Program Participant will indemnify, repay and hold the Released Persons harmless from any and all such claims.

Article IX. Termination Right

Section 9.01 NPC Efforts

NPC will use their best efforts to achieve sufficient participation to meet the participation benchmarks necessary to effectuate the Program.

Section 9.02 Walk Away Right

BHCP shall have the option, in its sole discretion, to terminate the Program and this Agreement if **less than ninety percent (90%) of the Eligible Claimants in the MDL, any Other Federal Court Proceedings, or any State Court Proceedings, as defined below, constitute Program Participants (the "Walk Away Right")**. For purposes of determining whether the foregoing participation threshold has been met, (a) the denominator will include (i) all Eligible Claimants alleging only a Gallbladder Injury; (ii) all Eligible Claimants alleging a Gallbladder Injury in combination with any additional injury other than a VTE or ATE; and (iii) all Eligible Claimants alleging a Gallbladder Injury in combination with a VTE or ATE if, as to each such claim, the Eligible Claimant has enrolled in the Program, and (b) the numerator will include all Eligible Claimants who are Program Participants. BHCP may exercise the Walk Away Right, if available, on or before 11:59 p.m. C.T. on the thirtieth (30th) day following the last Opt In Deadline attributable to an Eligible Claimant. BHCP shall exercise its Walk Away Right by filing notice through the MDL Court's Electronic Case Filing System. BHCP also shall provide written notice of its exercise of the Walk Away Right, as applicable, to each of the state court judges presiding over the State Coordinating Courts, with a copy to state-court liaison counsel. The date on which BHCP's Walk Away Right expires without previously having been exercised shall be the "Effective Date."

Section 9.03 Consequences of Exercise of Walk Away Right

Upon exercising the Walk Away Right, the Program shall immediately terminate and this Agreement becomes null and void and all Releases and Stipulations of Dismissal or Motions to Dismiss shall promptly be returned to the NPC, the Claimant's counsel, or the pro se Claimant, as appropriate. BHCP shall be responsible for payment of any Administrative Expenses incurred through the termination date.

Article X. Warranty of Capacity to Enter into the Agreement

Section 10.01 NPC

Each Person duly appointed to and comprising the NPC represents and warrants that such Person has all requisite power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby. The execution, delivery, and performance of this Agreement and the consummation by such Person of the actions contemplated hereby will be, upon delivery, duly and validly executed and delivered by such Person and will constitute its legal, valid, and binding obligation.

Section 10.02 BHCP

BHCP represents and warrants that it has all requisite power and authority to execute, deliver, and perform this Agreement and to consummate the transactions contemplated hereby. The execution, delivery, and performance of this Agreement and the consummation by it of the actions contemplated hereby will be, upon delivery, duly and validly executed and delivered by BHCP and will constitute its legal, valid, and binding obligation.

Section 10.03 Program Participants

- (A) By participating in the Program (whether by not submitting a timely "Notice of Intent to Opt Out Form," if the Program Participant is an Eligible MDL Claimant who does not allege an ATE or VTE in addition to a gallbladder injury, or by submitting a "Notice of Intent to Opt In Form," if she is not an Eligible MDL Claimant or if she is an Eligible MDL Claimant who alleges an ATE or VTE injury in addition to a gallbladder injury), each Program Participant, on her own behalf and on behalf of her heirs, beneficiaries, agents, estates, executors, administrators, personal representatives, successors and assigns, shall be deemed to have agreed to resolve her Claims with Defendants and to have granted her counsel the authority to resolve her Claims with Defendants in accordance with the terms of this Agreement. Each Program Participant further represents and warrants that she has the sole right and exclusive authority to enter into this Agreement and to submit a Claim Package under it; that neither her Claim nor any of the claims, demands or obligations referred to in this Agreement have been sold, assigned, subrogated, transferred, or

otherwise disposed of by her; and that she is the sole Person who may have a potential cause of action against Defendants relative to her Claim. Each Program Participant further represents and warrants that no other Person or entity has any right, title or interest in her Claim, any of the demands, obligations, or causes of action referred to in this Agreement, or any Final Award to her, and that there are no other Liens (except as may be disclosed in accordance with Article VIII herein) other than the actual or potential attorneys liens of the Program Participant's counsel to the extent such attorneys liens have been perfected. Private funding agreements are not liens under this Agreement, and are not the responsibility of BHCP. To the extent any Program Participant has received any funding or other consideration from any third party, including any private litigation funding, such Program Participant represents and warrants that such third party has no Lien or other claim that can be asserted against any of the Released Parties or the Qualified Settlement Fund or any portion thereof. Each Program Participant agrees that she will indicate on his or her Claim Form whether a bankruptcy action is currently pending in which he or she is seeking bankruptcy protection.

- (B) Each Program Participant, by participating in the Program as provided for herein, and her counsel acknowledge and agree that they are contractually bound by the terms of this Agreement.

Article XI. Public Announcements

Section 11.01 Purposefully Omitted

Article XII. Miscellaneous

Section 12.01 Notice

- (A) Any notice, request, instruction or other document to be delivered pursuant to this Agreement shall be sent to the appropriate Party as follows, or as otherwise instructed, by a notice delivered to the other Party pursuant to this Section 12.01(A). Notice may be provided by (i) United States mail, return receipt requested; (ii) to the extent specified hereunder, electronic mail; (iii) facsimile, with a confirming copy sent within one day by regular United States Mail; (iv) prepaid courier; (v) Federal Express; or (vi) personal delivery:

- (1) If to BHCP:

Douglas Beck
Shook, Hardy & Bacon L.L.P.
2555 Grand Blvd.
Kansas City, MO 64108-2613
dbeck@shb.com
Phone: (816) 421-5547
Fax: (816) 474-6550

and

Jeffery Fields
Shook, Hardy & Bacon L.L.P.
2555 Grand Blvd.
Kansas City, MO 64108-2613
jfields@shb.com
Phone: (816) 559-2266
Fax: (816) 421-5547

- (2) If to any Program Participant represented by counsel:

To such Program Participant's counsel as reflected on such Program Participant's Claim Form, or, if such Program Participant has not provided a Claim Form with the necessary contact information, then to the first-listed counsel for such Program Participant, listed on such Program Participant's complaint.

(3) If to the NPC:

Michael S. Burg
Burg Simpson Eldredge Hersh & Jardine, P.C.
40 Inverness Drive East
Englewood, CO 80112
Phone: (303) 792-5595
Fax: (303) 708-0527
yazgbnotice@burgsimpson.com

Michael A. London
Douglas & London, P.C.
111 John Street
Suite 1400
New York, NY 10038
Phone: (212) 566-7500
Fax: (212) 566-7501
mlondon@douglasandlondon.com

Richard D. Meadow
The Lanier Law Firm
126 East 56th Street
New York, NY 10022
Phone: (212) 421-2800
Fax: (917) 546-0464
rdm@lanierlawfirm.com

Daniel S. Robinson
Robinson Calcagnie Robinson Shapiro & Davis, Inc.
19 Corporate Plaza Drive
Newport Beach, CA 92660
Phone: (949) 720-1288
Fax: (949) 720-1292
drobinson@rcrlaw.net

and

Michael M. Weinkowitz
Levin Fishbein Sedran & Berman
510 Walnut Street
Suite 500
Philadelphia, PA 19106
Phone: (215) 592-1500
Fax: (215) 592-4663
YazGBNotice@lfsblaw.com

- (4) If to a Program Participant who is not represented by counsel:

To such Program Participant's address as reflected on such Program Participant's Claim Form, or, if such Program Participant has not provided a Claim Form with the necessary contact information, then to such Program Participant's address as reflected on such Program Participant's complaint.

- (B) Any notice, request, instruction or other document to be given by any Party or any Claims Administrator to any Program Participant or her counsel hereunder, shall be in writing and delivered in accordance with the terms of Section 12.01(A) above, and such party or Claims Administrator may rely on the contact information last provided by the Program Participant or her counsel to such party or Claims Administrator, as applicable, and no party nor any Claims Administrator shall have any obligation to (but in its sole and absolute discretion may) take other steps to locate Program Participants or counsel as to whom notices, requests, instructions or other documents have been returned as undelivered or undeliverable. Each Program Participant and (if applicable) her counsel shall have the responsibility to keep the Claims Administrator informed of the correct contact information for both such Program Participant and such counsel.
- (C) Any such notice, request, instruction or other document shall be deemed to have been given as of the date so transmitted by facsimile or electronic mail, on the next Business Day when sent by Federal Express, or five Business Days after the date so mailed, provided that if any such date on which any such notice or other communication shall be deemed to have been given is not a Business Day, then such notice or other communication shall be deemed to have been given as of the next following Business Day and, provided, further, that delivery otherwise shall be deemed to occur upon tender and rejection by the intended recipient.

Section 12.02 Governing Law

The provisions of this Agreement, appendices, and the individual Releases shall be interpreted in accordance with, and governed by, the laws of the State of Illinois (or United States federal law, to the extent applicable), including any applicable statutes of limitation, without regard to any otherwise applicable principles of conflicts of law or choice of law rules (whether of the State of Illinois or any other jurisdiction) that would result in the application of the substantive or procedural rules or law of any other jurisdiction. The Parties irrevocably submit to the jurisdiction of the Special Master and the MDL Court (or the state court where the case is pending should the MDL Court lack subject matter jurisdiction) for any suit, action, proceeding, or dispute arising out of or relating to the Program, the applicability or enforceability of the Program, or any

document relating to the Program, including the Agreement, any of its Appendices, or the individual Releases.

Section 12.03 Waiver of Inconsistent Provisions of Law; Severability

- (A) To the fullest extent permitted by applicable law, each Party waives any provision of law (including the common law), which renders any provision of this Agreement invalid, illegal or unenforceable in any respect.
- (B) Any provision of this Agreement which is prohibited or unenforceable to any extent or in any particular context shall be ineffective, but such ineffectiveness shall be limited as follows: (i) if such provision is prohibited or unenforceable only in or as it relates to a particular jurisdiction, such provision shall be ineffective only in or as it relates to (as the case may be) such jurisdiction and only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability in or as it relates to (as the case may be) such jurisdiction shall not otherwise invalidate or render unenforceable such provision (in such or any other jurisdiction); (ii) if (without limitation of, and after giving effect to, clause (i)) such provision is prohibited or unenforceable only in a particular context (including only as to a particular Person or Persons or under any particular circumstance or circumstances), such provision shall be ineffective, but only in such particular context; and (iii) without limitation of clauses (i) or (ii), such ineffectiveness shall not invalidate any other provision of this Agreement. In any event, upon any such determination that any term or other provision is invalid, illegal or unenforceable, NPC and BHCP shall negotiate in good faith to modify this Agreement so as to effect the original intent of NPC and BHCP as closely as possible to the fullest extent permitted by applicable law. Nothing in this Section 12.03(B) is intended to, or shall, limit (1) Section 12.03(A) or (2) the intended effect of Section 12.02.

Section 12.04 Good Faith Negotiations

The NPC and BHCP each acknowledge that: the negotiations leading up to this Agreement were conducted regularly and at arm's length; this Agreement is made and executed by and of each such Party's own free will; each such Party knows all of the relevant facts and its rights in connection therewith; and such Party has not been improperly influenced or induced to make this settlement as a result of any act or action on the part of any other Party or employee, agent, attorney or representative of any other Party. The Parties hereby acknowledge that they entered into this Agreement to compromise permanently and settle the claims between any Program Participant, on the one hand, and BHCP, on the other hand, settled by the execution of this Agreement and the Program Participant's individual Release.

Section 12.05 Construction

- (A) With regard to each and every term and condition of this Agreement, the Agreement has been negotiated, prepared and drafted by the NPC and counsel for BHCP, and if at any time any Party desires or is required to interpret or construe any such term or condition or any agreement or instrument subject hereto, no consideration shall be given to the issue of which Party hereto, or its counsel, actually prepared, drafted or requested any term or condition hereof.
- (B) The headings of the sections, paragraphs and subsections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. Any reference to an Appendix shall be deemed to refer to the applicable Appendix attached hereto. The words “include” and “including” and words of similar import when used in this Agreement or any Appendix hereto are not limiting and shall be construed to be followed by the words “without limitation,” whether or not they are in fact followed by such words. The definitions contained in this Agreement or any Appendix attached hereto are applicable to the singular as well as the plural forms of such terms. Words of any gender (masculine, feminine, neuter) mean and include correlative words of the other genders. As used herein or in any Appendix hereto, the term “dollars” and the symbol “\$”, shall mean United States dollars. References herein to instruments or documents being submitted “by” any Person include (whether or not so specified) submission of the same on behalf of such Person by her counsel whether or not so specified, provided that if any particular instrument or document is required herein to be executed by a particular Person, it must (unless otherwise expressly specified herein) be so executed by such Person. References herein to any particular Section (such as, for example, Section 12.01) shall be deemed to refer to all sub-Sections of such Section (such as, for example, Section 12.01(A), 12.01(B), etc.), all sub-sub-Sections of such sub-Sections, and so on; the corresponding principle applies to all references herein to any particular sub-Section, sub-sub-Section and so on. The words “this Agreement”, “herein”, “hereof”, “hereby”, “hereunder” and words of similar import refer to this Agreement as a whole (together with any Appendices attached hereto) and not to any particular subdivision unless expressly so limited or the context requires otherwise. Any reference herein to this Agreement shall be deemed to include this Agreement as it may be modified, varied, amended or supplemented from time to time.

Section 12.06 No Third Party Beneficiaries; Assignment

- (A) No provision of this Agreement or any Appendix attached hereto is intended to create any third-party beneficiary hereto or thereto except as expressly set forth herein or therein. For the avoidance of doubt, nothing

in this Section 12.06 limits or modifies the third-party beneficiary provisions of any Claim Form, Release or Stipulation of Dismissal. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns; provided, however, that neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned by any of the NPC or any Program Participant who becomes a Party hereto without the prior written consent of BHCP. Any assignment in violation of this Section 12.06(A) shall be null and void ab initio.

- (B) Without limitation of Section 12.06(A) but also without limitation of any NPC's or any Program Participant's right to enforce this Agreement or an associated individual Release, or in the event of gross negligence by the relevant official under this Agreement, no Program Participant shall have any right to institute any proceeding, judicial or otherwise, against any of Defendants (including Bayer), any Special Master, or any Claims Administrator to enforce, or otherwise with respect to, this Agreement.

Section 12.07 Further Assurances

From time to time following the Execution Date, (i) each Party shall take such reasonable actions consistent with the terms of this Agreement as may reasonably be requested by any other Party, and otherwise reasonably cooperate with each other Party in a manner consistent with the terms of this Agreement as reasonably requested by each such other Party, and (ii) each Program Participant and her counsel, if any, shall take such reasonable actions consistent with the terms of this Agreement as may reasonably be requested by BHCP or by the NPC, and otherwise reasonably cooperate with BHCP and the NPC in a manner consistent with the terms of this Agreement as reasonably requested by BHCP or the NPC, in the case of each of (i) and (ii) as may be reasonably necessary in order further to effectuate the intent and purposes of this Agreement and to carry out the terms hereof. To the extent such actions shall be made by counsel, such actions shall be consistent with their duties to their clients who are parties to this Agreement.

Section 12.08 Specific Performance

It is understood and agreed by the Parties that money damages would not be a sufficient remedy for any breach of this Agreement by any Party and each non-breaching Party shall be entitled to specific performance and injunctive or other equitable relief as a remedy of any such breach in addition to any other remedy available at law or in equity, without the necessity of demonstrating the inadequacy of money damages.

Section 12.09 Entire Agreement

This Agreement contains the entire agreement between or among the Parties with respect to the subject matter hereof and supersedes and cancels all previous

agreements, negotiations and commitments between or among the Parties hereto (oral or otherwise) with respect to the subject matter hereof.

Section 12.010 Counterparts; Facsimile Signature

This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall together constitute one and the same instrument. It shall not be necessary for any counterpart to bear the signature of all parties hereto. This Agreement and any amendments hereto, to the extent signed and delivered by means of a facsimile machine or electronic scan (including in the form of an Adobe Acrobat PDF file format), shall be treated in all manner and respects as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

Section 12.011 Recitals

All recitals are incorporated herein as material provisions of this Agreement.

Article XIII. Defined Terms

“Administrative Expenses” has the meaning ascribed thereto in Section 2.04(A).

“Agreement” or “Settlement Agreement” means this Settlement Agreement, including any and all Exhibits, Appendices, and Schedules attached hereto, as the same may be amended or modified from time to time in accordance with the terms hereof.

“ATE” means arterial thromboembolism, including but not limited to myocardial infarction (heart attack) and arterial thromboembolic stroke.

“BarrTeva” means, collectively, Barr Laboratories, Inc., Teva Pharmaceuticals USA, Inc., Barr Pharmaceuticals LLC, Barr Pharmaceuticals Inc., and Teva Pharmaceutical Industries Ltd.

“Bayer” means, collectively, Bayer AG and each of its subsidiaries, affiliates, and divisions who is a Defendant in any of the MDL Cases, any Other Federal Court Proceedings or any State Court Proceedings.

“BHCP” has the meaning ascribed thereto in the Preamble.

“Business Day” means any day other than a Saturday, a Sunday, or a day on which banking institutions in New York City, New York, are authorized or obligated by law or executive order to remain closed.

“California Coordinated Proceedings” has the meaning ascribed thereto in Recital A.

“Cap” has the meaning ascribed thereto in Section 2.01(C).

“Cholecystectomy” has the meaning ascribed thereto in Section 3.03(A)(6).

“Claimants” includes MDL Claimants, Federal Claimants and State Claimants who allege a Claim.

“Claim” and “Claims” have the meanings ascribed thereto in Recital B.

“Claims Administrator” means the Person appointed by BHCP and the NPC, initially BrownGreer PLC, to fulfill the functions of the “Claims Administrator” set forth in this Agreement (for so long as such Person or Persons continues to serve in such capacity).

“Claims Administrator Liaisons” has the meaning set forth in Section 5.02.

“Claim Form” means the Form contained in Appendix D that must be submitted as part of the Claim Package.

“Claim Package” means a Program Participant’s request for an award, which includes the requisite documentation, as set forth in Section 3.03, submitted to the Claims Administrator for award consideration under the Program.

“Claim Package Deadline” has the meaning ascribed thereto in Section 3.01.

“CM/ECF” means the electronic case filing system utilized by the MDL Court.

“CMO” means a Case Management Order entered by the MDL Court, a Federal Court or a State Court.

“Cure Deadline” has the meaning ascribed thereto in Section 3.05(C).

“DCOCs” has the meaning ascribed thereto in Recital A.

“Declaration of Counsel” means a declaration in the form attached hereto as Appendix G certifying that the Eligible Claimant (or his or her personal representative) signed a retainer agreement with that attorney (or with his or her law firm) prior to the Execution Date.

“Defendants” means any and all defendants in any of the MDL Cases, the Other Federal Court Proceedings, or the State Court Proceedings, and all retailers, wholesalers, marketers, or other entities that distributed, sold, or otherwise provided DCOCs to any DCOC user in any such cases, and includes all parents, subsidiaries, successors, predecessors, and affiliated companies of the foregoing, and the respective employees, agents, assigns, shareholders, officers, directors, servants, other representatives, underwriters, attorneys, and insurers of each of them.

“Derivative Claim” means a claim that derives from the Claim alleged by the Person whose gallbladder was injured.

“Effective Date” has the meaning ascribed thereto in Section 9.02.

“Eligible Claimant” has the meaning ascribed thereto in Section 1.05.

“Eligible MDL Claimant” means an Eligible Claimant with a case filed in the MDL as of the Filing Deadline.

“Eligible Claims” include, and are limited to, claims from Eligible Claimants who timely submit a completed Claim Package in accordance with the terms of the Agreement.

“Event Records” has the meaning ascribed thereto in Section 3.03(A)(6).

“Execution Date” has the meaning ascribed thereto in the Preamble.

“Expense Report” has the meaning ascribed thereto in Section 2.04(B).

“Federal Cases” means any Claims constituting part of the MDL or the Other Federal Court Proceedings (including any such Claim that has been removed from federal court and is awaiting transfer to the MDL Court) that have been filed as of the Filing Deadline.

“Federal Claimant” means a Person or Persons who have asserted a Claim in any Other Federal Court Proceedings.

“Federal Participant” means each Eligible Claimant with Claims constituting part of the Other Federal Court Proceedings who (or whose counsel) timely has filed a “Notice of Intent to Opt In Form.”

“Federal Stipulation of Dismissal” has the meaning ascribed thereto in Section 3.03(A)(8)(b).

“Filing Deadline” means March 25, 2013 (i.e., the tenth (10th) day following the date on which the MDL Court posts on the CM/ECF system the Implementing CMO together with the Agreement).

“Final Award” has the meaning ascribed thereto in Section 3.06(A).

“Final Award Notice” has the meaning ascribed thereto in Section 3.06(D).

“Gallbladder Injury” means a gallbladder injury or gallbladder disease.

“Gallbladder Resolution Program” has the meaning ascribed thereto in Recital B.

“Governmental Payors” has the meaning ascribed thereto in Section 8.01(B).

“Implementing CMO” has the meaning ascribed thereto in Section 1.04(A).

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

“Liability or Liabilities” means any and all debts, liabilities, covenants, promises, contracts, agreements and/or obligations of whatever kind, nature, description or basis, whether

fixed, contingent or otherwise, whether presently known or unknown, developed or undeveloped, discovered or undiscovered, foreseen or unforeseen, matured or unmatured, or accrued or not accrued.

“Lien” means any lien, claim, mortgage, hypothecation, encumbrance, assignment, subrogation right, reimbursement claim, right of indemnity, right to payment, third-party interest or adverse claim of any nature whatsoever, pledge, security interests or charges of any kind, in each case whether statutory or otherwise, including any of the foregoing relating to medical treatment or lost wages, based on any legal expenses, bills, or costs that have been or may be asserted by any health care provider, insurer, governmental entity, employer, any other Person operating under contract with any of the previously mentioned entities, or any other Person.

“Lien Resolution Firm” means an entity chosen by the NPC to assist Program Participants in dealing with Liens that are or may be asserted by Governmental Payors or Private Payors.

“LMI” has the meaning ascribed thereto in Section 3.03(B).

“MDL” has the meaning ascribed thereto in Recital A.

“MDL Cases” has the meaning ascribed thereto in Recital B.

“MDL Claimant” means a Person or Persons who have asserted a Claim in the MDL.

“MDL Court” has the meaning ascribed thereto in Recital A.

“MDL Participant” means each Eligible MDL Claimant who has filed a gallbladder claim, but not a Claim alleging a VTE or ATE Injury, and who has not filed timely a “Notice of Intent to Opt Out Form,” and each Eligible MDL Claimant who has filed a Claim alleging a VTE or ATE Injury as well as a gallbladder claim and has filed timely a “Notice of Intent to Opt In Form.”

“MDL Stipulation of Dismissal” has the meaning ascribed thereto in Section 3.03(A)(8)(a).

“Medical Records” has the meaning ascribed thereto in Section 3.03(A)(5).

“NPC” has the meaning ascribed thereto in the Preamble.

“New Jersey Coordinated Proceedings” has the meaning ascribed thereto in Recital A.

“Non-Participating Private Payor” has the meaning ascribed thereto in Section 8.01(C)(2)(c).

“Notice” has the meaning ascribed thereto in Section 3.05(B).

“Notice of Appeal” has the meaning ascribed thereto in Section 5.03(F).

“Opt In Deadline” has the meaning ascribed thereto in Section 1.04(A).

“Opt Out Deadline” has the meaning ascribed thereto in Section 1.04(A).

“Other Federal Court Proceedings” has the meaning ascribed thereto in Recital A.

“Party” means, individually, and “Parties” means, collectively, NPC, BHCP, Program Participants and their counsel.

“Person” means a natural person, corporation, limited liability company, other company, trust, joint venture, association, partnership, or other enterprise or entity, or the legal representative of any of the foregoing.

“Philadelphia Court of Common Pleas Coordinated Proceeding” has the meaning ascribed thereto in Recital A.

“PLRP” has the meaning ascribed thereto in Section 8.01(C)(2)(b).

“Pre-Cap Total” has the meaning ascribed thereto in Section 2.01(C)(1).

“Preliminary Award” has the meaning ascribed thereto in Section 3.06(A).

“Preliminary Award Notice” has the meaning ascribed thereto in Section 3.06(B).

“Prescription Records” has the meaning ascribed thereto in Section 3.03(A)(4).

“Private Lien Resolution Program” means a program administered by the Lien Resolution Firm to address private Liens.

“Private Payors” has the meaning ascribed thereto in Section 8.01(C).

“Program” has the meaning ascribed thereto in Recital B.

“Program Participant(s)” means, individually and collectively, each Eligible Claimant who participates in the Program, either by opting in, or by declining to opt out, as the circumstances require.

“QSF Administrator” refers to the Person who will function as the Qualified Settlement Fund Administrator.

“Qualified Settlement Fund” means the settlement fund established pursuant to Section 2.02 in which BHCP will deposit the Settlement Funds.

“Qualified Settlement Fund Agreement” means the agreement governing distributions of monies deposited into the Qualified Settlement Fund.

“Release” means the form of release of claims attached hereto as Appendix E-1 or E-2, as applicable.

“Released Claims” has the meaning ascribed thereto in the Release.

“Released Persons” has the meaning ascribed thereto in the Release.

“Second Notice” has the meaning ascribed thereto in Section 3.05(B).

“Settlement Funds” has the meaning ascribed thereto in Section 2.01(A).

“Special Master” has the meaning ascribed thereto in Section 4.01.

“State Cases” means any Claims constituting part of the State Court Proceedings that are pending as of the Filing Deadline.

“State Claimant” means a Person or Persons who have asserted a Claim in any State Court Proceedings.

“State Coordinating Courts” has the meaning ascribed thereto in Recital A.

“State Court Proceedings” has the meaning ascribed thereto in Recital A.

“State Participant” means each Eligible Claimant with Claims constituting part of the State Court Proceedings who (or whose counsel) timely has filed a “Notice of Intent to Opt In Form.”

“State Stipulation of Dismissal” has the meaning ascribed thereto in Section 3.03(8)(c).

“Stipulation of Dismissal” means, as the context may require, an MDL Stipulation of Dismissal, a Federal Stipulation of Dismissal, or a State Stipulation of Dismissal.

“Supporting Documentation” means any and all of the various documents and information required pursuant to Section 3.03 of the Agreement.

“Tax Expenses” has the meaning ascribed thereto in Section 2.03(C).

“Taxes” has the meaning ascribed thereto in Section 2.03(C).

“Tier 1 Award” has the meaning ascribed thereto in Section 2.05(B)(1).

“Tier 2 Award” has the meaning ascribed thereto in Section 2.05(B)(2).

“Tier 1 Claim” has the meaning ascribed thereto in Section 2.05(A)(1).

“Tier 2 Claim” has the meaning ascribed thereto in Section 2.05(A)(2).

“VTE” means a venous thromboembolism, including deep vein thrombosis and pulmonary embolism.

“VTE or ATE Injury” means a Program Participant’s documented VTE injury or ATE injury resulting from the use of DCOCs.


“Walk Away Right” has the meaning ascribed thereto in Section 9.02.

Article XIV. Appendices

Appendix A	Implementing CMO
Appendix B-1	Notice of Intent to Opt Out Form
Appendix B-2	Notice of Intent to Opt In Form
Appendix C	Reserved
Appendix D	Claim Form
Appendix E-1	Release
Appendix E-2	Release Pertaining to Action with Derivative Claims
Appendix F-1	MDL Stipulation of Dismissal
Appendix F-2	State Stipulation of Dismissal (California)
Appendix F-3	State Stipulation of Dismissal (New Jersey)
Appendix F-4	State Stipulation of Dismissal (Pennsylvania)
Appendix G	Declaration of Counsel

IN WITNESS WHEREOF, NPC and BHCP have executed this Agreement effective as of the Execution Date.

Bayer HealthCare Pharmaceuticals Inc.



Michael McDonald, Secretary
March 15, 2013
Bayer HealthCare Pharmaceuticals Inc.

Negotiating Plaintiffs' Counsel

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