

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

IN RE: DEPUY ORTHOPAEDICS, INC.	)	
ASR HIP IMPLANT PRODUCTS	)	
LIABILITY LITIGATION	)	MDL Docket No. 1:10-md-02197-DAK
-----	)	
	)	HONORABLE DAVID A. KATZ
THIS DOCUMENT APPLIES TO:	)	
	)	
ALL CASES	)	
	)	
	)	

**CASE MANAGEMENT ORDER NO. 20**

**Procedure for Filing Qualified Settlement Fund Motions**

This matter comes before the Court on the issue of the procedure to be followed when filing motions to establish a qualified settlement fund for one or more plaintiffs on an individual firm basis:<sup>1</sup>

The motion to establish a qualified settlement fund shall be filed (under seal) in the relevant member action only and not in the Master Case file. If the motion to establish a qualified settlement fund applies to more than one plaintiff, the following procedure shall be followed:

- 1) The motion shall be filed in one and only one of the relevant member actions and shall be made using the form attached hereto as Exhibit 1;

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<sup>1</sup> Nothing in this Order changes or affects CMO 19 or the ASR Settlement Escrow Agreement dated as of April 30, 2014.



5) The "Related Cases Exhibit" (Appendix A) shall then identify the three individual cases to which the motion pertains. *i.e.*, (1) *Jane Doe v. DePuy Orthopaedics et al.* Civil Action No. 1:09-md-XX1; (2) *Lynn Doe v. DePuy Orthopaedics et al.* Civil Action No. 1:09-md-XX2; and (3) *Jennifer Doe v. DePuy Orthopaedics et al.* Civil Action No. 1:09-md-XX3.

6) All motions and accompanying documents shall be filed under seal and authority to do so is hereby granted.

**IT IS SO ORDERED:**

Dated: June 4, 2014

s/ David A. Katz  
Honorable David A. Katz  
United States District Court Judge

# Exhibit 1

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

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	)	
IN RE: DEPUY ORTHOPAEDICS, INC.	)	Case No.
ASR HIP IMPLANT PRODUCTS	)	
LIABILITY LITIGATION	)	MDL Docket No. 1:10-md-02197-DAK
	)	
	)	HONORABLE DAVID A. KATZ
	)	
THIS DOCUMENT APPLIES TO:	)	
	)	
[CASE NAME] AND RELATED CASES	)	
(SEE APPENDIX A)	)	
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**AGREED MOTION TO ADMINISTER SETTLEMENTS  
RESOLVING CASES AND CLAIMS OF [FIRM NAME] PLAINTIFFS  
(FILED UNDER SEAL)**

Plaintiffs, clients of the law firm of FIRM NAME (“[FIRM NAME] Plaintiffs”) (which includes all plaintiffs listed in Appendix A, as well as any clients of [FIRM NAME] who enter into settlements with defendants in the future, by and through their counsel move this Court for an Order to: (i) establish an individual firm Qualified Settlement Fund, which shall be called the [FIRM NAME] ASR Settlement Fund (the “Fund”); and (ii) to appoint an administrator for this individual firm Fund.<sup>1</sup> In support of this Motion, Plaintiffs respectfully state as follows:

1. [FIRM NAME] Plaintiffs are seeking damages from DePuy Orthopaedics, Inc., DePuy Inc., DePuy International Ltd., DePuy Products, Inc., Johnson & Johnson International, Johnson & Johnson, and Johnson & Johnson Services, Inc. (“Defendants”) arising from implantation, use and/or removal of the DePuy ASR XL Acetabular Hip System, the DePuy ASR

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<sup>1</sup> Nothing in this motion or proposed order is intended to change or affect the ASR Settlement Escrow Agreement dated as of April 30, 2014 or CMO 19.

Hip Resurfacing System, and any and all component or ancillary parts thereof (collectively, "ASR Claims") through various legal actions, which on December 7, 2010, were consolidated in this Court by the Judicial Panel on Multidistrict Litigation by a transfer order pursuant to 28 U.S.C. § 1407.

2. Plaintiffs, by and through counsel, have conferred with counsel for Defendants and Defendants have no objection to this filing and to the relief sought herein.

3. Defendants and the Settlement Oversight Committee, a committee appointed by this Court, entered into a Settlement Agreement dated as of November 19, 2013 (the "ASR Master Settlement Agreement"), which establishes a global private settlement program to resolve ASR claims — whether filed or unfiled — of U.S. claimants against DePuy and through which individual [FIRM NAME] Plaintiffs, whose cases are listed in Appendix A, have agreed to settle their ASR claims.

4. At this time the exact distribution of settlement funds to the [FIRM NAME] Claimants cannot be finalized. Hence, in the best interest of all parties the Court should establish this individual firm Fund to receive funds from the Master Settlement Agreement satisfying these ASR Claims and allowing for the final disbursement of settlement funds to the [FIRM NAME] Plaintiffs.

5. For those satisfying the requirements for payment under the ASR Master Settlement Agreement, including the provision of a release, the Claims Processor BrownGreer will issue Disbursement Lists to JPM Chase, the Escrow Agent, for the distribution of funds from the ASR Settlement Escrow Fund. The distribution of funds from the ASR Settlement Escrow Fund for [FIRM NAME's] Claimants will be made to the individual [FIRM's NAME's] ASR Settlement Fund, for payment on behalf of the Defendants. The Disbursements Lists referred to above will include this Fund's account information. All settlement payment

obligations of the Defendants under the ASR Master Settlement Agreement to the identified Claimants are satisfied once the settlement payments are transferred from the ASR Settlement Escrow Fund to the [FIRM NAME] ASR Settlement Fund, which is the subject of this motion. Defendants have no responsibility for the funds in the [FIRM NAME] ASR Settlement Fund, its investments, administration or disbursements therefrom.

6. The Fund shall be a Qualified Settlement Fund as described in Treas. Reg. Section 1.468B-1, established by order of this Court, and the Fund shall remain subject to the continuing jurisdiction of this Court.

7. This Court has jurisdiction over this matter under Treas. Reg. Section 1.468B-1(c)(1), which states in relevant part that a Qualified Settlement Fund “is established pursuant to an order of, or is approved by, the United States, any state (including the District of Columbia), territory, possession, or political subdivision thereof, or any agency or instrumentality (including a court of law) . . . and is subject to the continuing jurisdiction of that governmental authority.”

8. [FIRM NAME] Plaintiffs request that the Court approve the engagement of [ADMINISTRATOR NAME] as the “Fund Administrator” and “Trustee” (the “Fund Administrator”). [ADMINISTRATOR NAME]’s address is as follows: [ADDRESS]. [ADMINISTRATOR NAME] submits personally to the jurisdiction of this Court. Upon the dissolution or bankruptcy of [ADMINISTRATOR NAME], its appointment as Fund Administrator shall terminate and the [FIRM NAME] Plaintiffs and Defendants will seek Court approval of their nominated successor Fund Administrator.

9. Until such time that the distribution of the Total Settlement Proceeds from the [FIRM NAME] Fund can be identified, [FIRM NAME], no settlement monies shall be set apart for a [FIRM NAME] Plaintiff, or otherwise made available so that he or she may draw upon or otherwise control said settlement monies.

10. The Fund, by and through the Fund Administrator, shall only make payments to [FIRM NAME] or the [FIRM NAME] Plaintiffs, or such other claimants to the Fund with valid claims and / or liens.

11. The Fund, by and through the Fund Administrator, may purchase and assign any structured settlements created under any Release Agreements. Any structured settlement annuity contract shall be issued by a life insurance company that is rated A+ or better by A.M. Best Company.<sup>2</sup>

12. The claims made against the Defendants are made on account of physical bodily injury and arise out of alleged liability in tort or violation of law. The [FIRM NAME] Plaintiffs shall agree in writing to discharge the Fund and the Fund Administrator's liabilities in the making of any structured settlement payments, also known as periodic payments, by executing, along with the Fund Administrator, any necessary documents required or related to the discharge of those liabilities.

13. The Total Settlement Proceeds are the sole property of the Fund. Until such time as monies are distributed, the [FIRM NAME] Plaintiffs shall not possess any rights to demand or receive any portion of the Total Settlement Proceeds or the escrowed funds or to mortgage, pledge, or encumber the same in any manner. To the extent possible, this Motion shall be construed so as to prevent the [FIRM NAME] Plaintiffs from being in constructive receipt, as determined under federal income tax principles, of any amounts held by the Fund.

14. The Fund Administrator shall be indemnified and held harmless by the [FIRM NAME] Plaintiffs from any claims made by any alleged lien holder, or other person or entity that

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<sup>2</sup> Structured Settlement Payments are assigned to a qualified assignee by entering into qualified assignments of such structured settlement payments within the meaning of Section 130(c) of the Internal Revenue Code. The qualified assignee shall, respecting each person who is to receive periodic payments under a settlement agreement, purchase one or more qualified funding assets within the meaning of Section 130(d) of the Internal Revenue Code to fund any structured settlement payments assigned to the qualified assignee.



attempts to assert a right of payment, reimbursement or garnishment against the Fund. Should the Fund Administrator be named as a party to, or threatened to be made a party to, any threatened, pending or completed action, suit or proceeding of any kind, whether civil, administrative or arbitrative, and whether brought by or against or otherwise involving the Fund, by reason of the Fund Administrator having served in any capacity on behalf of the Fund, the Fund Administrator shall be indemnified and held harmless by the Plaintiffs against reasonable expenses, costs and fees (including attorneys' fees), judgment, awards, costs, amounts paid in settlement, and liabilities of all kinds incurred by the Fund Administrator in connection with or resulting from such actual or threatened action, suit or proceeding; except to the extent that it is finally determined by this Court that the Fund Administrator was grossly negligent or acted with willful misconduct in connection with the administration of this Fund.

15. [FIRM NAME] shall be indemnified and held harmless by the Fund Administrator from any claims which arise from the negligence or willful misconduct of the Fund Administrator as determined by this Court. Should [FIRM NAME] be named as a party to, or threatened to be made a party to, any threatened, pending or completed action, suit or proceeding of any kind, whether civil, administrative or arbitrative, by reason of the Fund Administrator's negligence or willful misconduct, [FIRM NAME] shall be indemnified and held harmless by the Fund Administrator against reasonable expenses, costs and fees (including attorneys' fees), judgment, awards, costs, amounts paid in settlement, and liabilities of all kinds incurred by [FIRM NAME] in connection with or resulting from such actual or threatened action, suit or proceeding.

16. The [FIRM NAME] Plaintiffs request that no bond be required, provided that all monies received by the Fund, which includes all principal and interest earned thereon, shall be deposited in an investment agency account held in custody at [BANK NAME] for the benefit of

and titled in the legal name of the Fund and invested in instruments/securities comprised of (a) United States Agency, Government Sponsored Enterprises or Treasury securities or obligations (or a mutual fund invested solely in such instruments) (b) cash equivalent securities including SEC registered money market funds and collateralized money market accounts; and/or (c) non-interest bearing corporate accounts subject to unlimited Federal Depository Insurance Corporation protections as available. The Fund shall be held at [BANK NAME], a financial institution doing business in [CITY], [STATE] according to the above terms and conditions [BANK NAME] shall be responsible for any and all investment related decisions, following the instructions of the Fund Administrator and/or its investment advisor pursuant to these terms and conditions, such that a principal preservation driven investment policy is implemented. Notwithstanding the foregoing, [BANK NAME] shall not be allowed to distribute any income or principal from the Fund except upon instructions of the Fund Administrator, or, if requested, upon the order of this Court upon the joint motion of the parties. The Fund Administrator retains the right to remove [BANK NAME], with or without cause, in its sole and absolute discretion. The Fund Administrator may designate a replacement bank upon the written consent of the [FIRM NAME] Plaintiffs and [FIRM NAME]. In the event of such replacement, the terms and conditions of this paragraph 16, including without limitation, those addressing bond requirements, investments, and distributions from the Fund, shall apply to any such replacement bank.

17. The Fund Administrator is permitted to distribute all excess interest accrued to the Fund, after the payment of all fees associated with the administration of the Fund, related expenses and related taxes, to the claimants on a pro rata basis. For example, if there are four claimants involved in a settlement, with each claimant possessing a 25% interest in the Total Settlement Proceeds, and the fund possesses \$100 in accrued interest, after the payment of

administration and other fees, expenses and taxes, the \$100 would be split evenly among the four claimants. As the example indicates, each claimant's share of the excess accrued interest is strictly correlated to their respective percentage interest in the Total Settlement Proceeds.

18. The Fund Administrator shall be authorized to distribute all attorneys' fees and litigation expenses to counsel for Plaintiffs, consistent with existing contingency fee contracts or, to the extent required by law, and, where required by law in an individual case, upon Court approval on motion of [FIRM NAME].

19. All taxes on the income of the Fund and expenses and costs incurred in connection with the taxation of the Fund (including, without limitation, the expenses of tax attorneys and accountants) shall be paid out of the Fund, shall be considered to be a cost of administration of the settlement, and shall be paid as instructed by the Fund Administrator.

20. Upon request, the Fund Administrator will prepare and deliver Fund Statements ("Statements") to counsel for the Plaintiffs and/or this Court. The Statements shall include a statement of receipts, investment earnings, and disbursements. The Fund Administrator shall provide the Statement no later than ten (10) business days following the request.

21. The Fund Administrator shall have the right to rely upon any affidavit, certificate, letter, notice, electronic mail or other document believed by the Fund Administrator to be genuine and sufficient, and upon any other evidence believed by the Fund Administrator, in its reasonable judgment, to be genuine and sufficient, which may be provided to the Fund Administrator by [FIRM NAME].

22. Upon final distribution of all monies paid into the Fund, the Fund Administrator shall take appropriate steps to wind down the Fund and thereafter be discharged from any further responsibility with respect to the Fund.

23. The Fund Administrator will obtain a Federal Taxpayer Identification Number for the [FIRM NAME] ASR Settlement Fund upon the execution of an Order by this Court establishing the Fund.

**WHEREFORE**, [FIRM NAME] Plaintiffs respectfully request that the Court consent to take continuing jurisdiction over the Fund pursuant to Treas. Reg. Section 1.468B-1(c)(1), and issue an Order which:

1. Establishes said Fund as a Qualified Settlement Fund within the meaning of Treasury Regulation Section 1.468B-1;

2. Appoints [ADMINISTRATOR NAME] as Fund Administrator and Trustee pursuant to the terms, conditions and restrictions of this Motion, thereby granting the Fund Administrator the authority to conduct any and all activities necessary to administer this Fund as described in this Motion;

4. Authorizes the Fund Administrator to effect qualified assignments of any resulting structured settlement liability within the meaning of Section 130(c) of the Internal Revenue Code to the qualified assignee;

5. Authorizes the Fund Administrator to distribute all attorneys' fees and litigation expenses to counsel for [FIRM NAME] Plaintiffs, as well as with those persons who are represented by [FIRM NAME] in future settlements, consistent with their existing contingency fee contracts;

6. Authorizes the Fund Administrator, upon final distribution of all monies paid into the Fund, to take appropriate steps to wind down the fund and thereafter discharging the Fund Administrator from any further responsibility with respect to the Fund; and

7. Places this Motion, the Court Order, and any other filings related to the [FIRM NAME] ASR Settlement Fund under seal.

**DATED** this \_\_\_\_th day of \_\_\_\_\_, 2014      Respectfully submitted,

s/ [Name of Password Registrant]

Name of Password Registrant [attorney bar number, if applicable]

Firm Name

Address

City, State, Zip Code

Phone: (xxx) xxx-xxxx

Fax: (xxx) xxx-xxxx

E-mail: [xxx@xxx.xxx](mailto:xxx@xxx.xxx)

**Attorneys for Plaintiffs**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on \_\_\_\_\_, 201\_\_, a copy of foregoing **AGREED MOTION TO ADMINISTER SETTLEMENTS RESOLVING CASES AND CLAIMS OF [FIRM NAME] PLAINTIFFS**] was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

s/ [Name of Password Registrant]

Name of Password Registrant [attorney bar number, if applicable]

Firm Name

Address

City, State, Zip Code

Phone: (xxx) xxx-xxxx

Fax: (xxx) xxx-xxxx

E-mail: [xxx@xxx.xxx](mailto:xxx@xxx.xxx)

**Attorneys for Plaintiffs**



reached by and between Plaintiffs in state or federal litigation or Claimants who are represented by [FIRM NAME] and Defendants shall be paid into the [FIRM NAME] ASR Settlement Fund, including payments received from the ASR Settlement Escrow Account in connection with those Plaintiffs and Claimants in which [FIRM NAME] is the Primary Law Firm and who meet conditions to release escrow into the [FIRM NAME] ASR Settlement Fund pursuant to the ASR Master Settlement Agreement dated as of November 19, 2013.<sup>1</sup> The Defendants shall have no liability with regard to the conduct of the Fund Administrator or to the [FIRM NAME] ASR Settlement Fund itself. The Defendants' liability to the Claimants and Plaintiffs shall terminate with payments into the [FIRM NAME] ASR Settlement Fund.

2. [ADMINISTRATOR NAME] is appointed as Fund Administrator and Trustee, shall serve without bond, and shall serve pursuant to the terms, conditions and restrictions of the Motion to Establish Qualified Settlement Fund and Appoint Fund Administrator and said Fund Administrator is given the authority to conduct any and all activities necessary to administer this Fund as described in the Motion.

3. No bond is required, provided that all monies received by the [FIRM NAME] ASR Settlement Fund, which includes all principal and interest earned thereon, shall be deposited in an investment agency account held in custody at [BANK NAME] for the benefit of and titled in the legal name of the Fund and invested in instruments/securities comprised of (a) United States Agency, Government Sponsored Enterprises or Treasury securities or

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<sup>1</sup> Nothing in this Order changes or affects CMO 19 or the ASR Settlement Escrow Agreement dated as of April 30, 2014.

obligations (or a mutual fund invested solely in such instruments) (b) cash equivalent securities including SEC registered money market funds and collateralized money market accounts; and / or (c) non-interest bearing corporate accounts subject to unlimited Federal Depository Insurance Corporation protections as available. The [FIRM NAME] ASR Settlement Fund shall be held at [BANK NAME], a financial institution doing business in [CITY], [STATE] according to the above terms and conditions. [BANK NAME] shall be responsible for any and all investment related decisions, following the instructions of the Fund Administrator and/or its investment advisor pursuant to these terms and conditions, such that a principal preservation driven investment policy is implemented. Notwithstanding the foregoing, [BANK NAME] shall not be allowed to distribute any income or principal from the Fund except upon instructions of the Fund Administrator, or, if requested, upon the order of this Court upon the joint motion of the parties. The Fund Administrator retains the right to remove [BANK NAME], with or without cause, in its sole and absolute discretion. The Fund Administrator may designate a replacement bank upon the written consent of the [FIRM NAME] Plaintiffs and [FIRM NAME]. In the event of such replacement, the terms and conditions of this Order, including without limitation, those addressing bond requirements, investments, and distributions from the Fund, shall apply to any such replacement bank.

4. The Fund Administrator is authorized to effect qualified assignments of any resulting structured settlement liability within the meaning of Section 130(c) of the Internal Revenue Code to the qualified assignee.



5. The Fund Administrator is authorized to distribute all attorneys' fees and litigation expenses to counsel for those [FIRM NAME] Plaintiffs listed in the Appendix, as well as with Claimants who are represented by [FIRM NAME] in future settlements, consistent with their existing contingency fee contracts.

6. The Fund Administrator is authorized, upon final distribution of all monies paid into the Fund, to take appropriate steps to wind down the fund, and thereafter the Fund Administrator is discharged from any further responsibility with respect to the Fund.

7. This Court Order and any other filings related to the [FIRM NAME] ASR Settlement Fund are placed under seal.

**IT IS SO ORDERED**

DATED: \_\_\_\_\_

\_\_\_\_\_  
Honorable David A. Katz  
United States District Court Judge



	<b>Plaintiff's Name</b>	<b>Caption</b>	<b>Civil Action Number</b>
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