UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

IN RE: AMERICAN MEDICAL SYSTEMS, INC.
PELVIC REPAIR SYSTEM PRODUCT LIABILITY LITIGATION **MDL NO. 2325**

PRETRIAL ORDER # 210
(ORDER REGARDING MOTION FOR APPROVAL OF QUALIFIED SETTLEMENT FUND – BFR and Goza & Honnold)

Bartimus, Frickleton, and Robertson, P.C. ("BFR") and Goza and Honnold, LLC ("Goza & Honnold"), as counsel for certain plaintiffs in this MDL 2325, have moved the Court for entry of an Order to aid in the efficient processing and administration of a confidential settlement agreement (the "Settlement Agreement") between BFR, Goza & Honnold, and Astora Women's Health, LLC (as the successor in interest to the women's health business of American Medical Systems, Inc.) (collectively "AMS/Astora"). [ECF No. 2222]. In particular, the Motion seeks an Order (1) approving the escrow agreement ("BFR/Goza & Honnold AMS/Astora Escrow Agreement"), attached hereto as Exhibit A, which forms a settlement escrow account named the BFR/Goza & Honnold AMS/Astora Settlement Escrow Fund ("Settlement Escrow") pursuant to the terms of the Settlement Agreement and the BFR/Goza & Honnold AMS/Astora Escrow Agreement established under the Settlement Agreement, (2) retaining continuing jurisdiction and supervision over the Settlement Escrow, and (3) determining that the Settlement Escrow is a "qualified settlement fund" within the meaning of section 468B of the Internal Revenue Code of 1986, as amended ("Code") and Treasury Regulation sections 1.468B-1, *et seq*. ("Regulations").

The court, having reviewed the Motion and the BFR/Goza & Honnold AMS/Astora Escrow Agreement, and finding good and sufficient cause therefor, hereby **FINDS** and **ORDERS** as follows:

1) The motion is **GRANTED**;

2) The terms of the BFR/Goza & Honnold AMS/Astora Escrow Agreement are hereby approved; and

2) The Settlement Escrow constitutes a qualified settlement fund within the meaning of section 468B of the Internal Revenue Code of 1986, as amended (the "Code") and Treasury Regulation sections 1.468B-1, *et seq*. The Court further retains continuing jurisdiction and supervision over the Settlement Escrow, in accordance with the terms of the BFR/Goza & Honnold AMS/Astora Escrow Agreement.

The court **DIRECTS** the Clerk to file a copy of this order in 2:12-md-02325 and it shall apply to each member related case previously transferred to, removed to, or filed in this district *where applicable*, which includes counsel in all member cases up to and including civil action number 2:16-cv-04025. In cases subsequently filed in this district, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each new action at the time of filing of the complaint. In cases subsequently removed or transferred to this court, a copy of the most recent pretrial order will be provided by the clerk to counsel appearing in each new action upon removal or transfer. It shall be the responsibility of the parties to review and abide by all

pretrial orders previously entered by the court. The orders may be accessed through the CM/ECF system or the court's website at www.wvsd.uscourts.gov.

ENTER: April 29, 2016

JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

ESCROW AGREEMENT

This Escrow Agreement (the "Escrow Agreement" or "BFR/Goza & Honnold AMS/Astora Escrow Agreement") is entered into and shall be effective as of _____, 2016, by and among (i) Astora Women's Health, Inc. (formerly known as American Medical Systems Holdings, Inc.) and Astora Women's Health, LLC (as the successor in interest to the women's health business of American Medical Systems, Inc.) (collectively, "AMS/Astora"), (ii) the law firms of Bartimus Frickleton Robertson, P.C. and Goza and Honnold, LLC (collectively, "Claimants' Counsel"), acting on behalf of certain claimants who have had implanted one or more AMS Pelvic Repair System Products or are asserting a claim on behalf of a claimant who is not capable of asserting her own claim (collectively, "Claimants," and each a "Claimant"); (iii) UMB Bank, n.a., solely in its capacity as escrow agent (the "Escrow Agent"); and (iv) Will Shapiro of Shapiro Settlement Solutions LLC serving as administrator (the "Administrator") (collectively, the "Parties").

RECITALS

WHEREAS, AMS/Astora and Claimants' Counsel have reached a confidential settlement agreement (the "Settlement Agreement") fully, finally, and forever to resolve, discharge, and settle certain claims asserted by Claimants represented by Claimants' Counsel;

WHEREAS, this Escrow Agreement sets forth the terms and conditions whereby the funds that Astora Women's Health, Inc. ("Astora") deposits, or causes to be deposited, into the escrow account (the "Settlement Escrow") established pursuant to this Escrow Agreement will be retained, invested, and distributed therefrom to effectuate the terms of the Settlement Agreement;

WHEREAS, the Settlement Agreement contemplates that the Settlement Escrow shall be, and shall be operated as, a "qualified settlement fund" within the meaning of Section 1.468B-1, *et seq.*, of the Treasury Regulations (the "Treasury Regulations") promulgated under Section 468B of the Internal Revenue Code of 1986, as amended (the "Code");

WHEREAS, the Settlement Escrow has been approved by, and is subject to the continuing jurisdiction of, Judge Joseph R. Goodwin of the United States District Court for the Southern District of West Virginia, Charleston Division (the "Settlement Court" or the "Court"); and

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

AGREEMENT

I. PURPOSE OF THE ESCROW AGREEMENT

The purpose of this Escrow Agreement shall be to facilitate the performance of the deposit and payment obligations and related obligations set forth in the Settlement Agreement.

II. APPOINTMENT OF ESCROW AGENT

UMB Bank, n.a. is hereby appointed to act as Escrow Agent in accordance with the terms hereof, and UMB Bank, n.a. hereby accepts such appointment. The Escrow Agent shall have all the rights, powers, protections, duties, and obligations expressly provided herein.

III. APPOINTMENT OF ADMINISTRATOR

Will Shapiro of Shapiro Settlement Solutions LLC ("S3") is hereby appointed to act as Administrator in accordance with the terms hereof, and Shapiro and S3 hereby accept such appointment. The Administrator shall serve as the "administrator" of the Settlement Escrow as a "qualified settlement fund" within the meaning of Treasury Regulation section 1.468B-2(k)(3), and shall have all such additional rights, powers, protections, duties, and obligations expressly provided herein.

IV. FUNDS WITHIN SETTLEMENT ESCROW ACCOUNT

The Settlement Escrow shall initially be comprised of three subaccounts (the "Accounts"), to be used solely for such purposes as are set forth in Section I above: (1) the Settlement Escrow Account, (2) Lien Holdback Account, and (3) the Administration Account. With approval of AMS/Astora and Claimants' Counsel, the Administrator and Escrow Agent may establish one or more additional Accounts for purposes of this Escrow Agreement.

V. DEPOSITS INTO SETTLEMENT ESCROW ACCOUNT

A. Deposit of Assets. Astora shall deposit, or cause to be deposited, into the Settlement Escrow such settlement consideration, and at such time, as provided in the Settlement Agreement, and further provided that all deposits shall be made in immediately available funds. The amounts that Astora deposits, or causes to be deposited, into the Settlement Escrow pursuant to this Section V shall be held in the Settlement Escrow Account until such time as the Escrow Agent receives written instructions pursuant to Section VI to distribute such amounts from the Settlement Escrow, or to transfer amounts to another Account within the Settlement Escrow. The amount of all deposits into the Settlement Escrow, and the interest, net realized gains, and other earnings accrued on such deposits, are collectively referred to herein (regardless of in which Accounts such amounts are held) as the "Escrowed Funds".

B. Acceptance of Assets. To further the purposes of this Escrow Agreement, the Escrow Agent agrees to accept the settlement contributions that Astora deposits, or causes to be deposited, into the Settlement Escrow, and any earnings thereon, and the Escrow Agent and Administrator shall perform their responsibilities with respect to the administration and distribution of the Escrowed Funds, in accordance with and subject to the terms of this Escrow Agreement.

VI. DISTRIBUTION OF ESCROWED FUNDS; TRANSFERS BETWEEN ACCOUNTS

A. Distribution of Escrowed Funds. The Parties acknowledge that the Escrowed Funds are to be distributed solely in the manner, and at the times, set forth in this Escrow Agreement.

1. Within ten (10) days of receipt of a Certified Claims Payment List which has been approved pursuant to signature by an authorized person (an "Authorized Person," as set forth in Section VII.C) for each of AMS/Astora and for Claimants' Counsel, the Escrow Agent shall, subject to the availability of funds deposited in the Settlement Escrow Account pursuant to Section V:

   a. distribute from the Settlement Escrow Account (1) the amount specified, if any, to the MDL 2325 Fund; (2) the amount specified to Claimants' Counsel, as agent of the Claimants (except where the Escrow Agent has received prior written notice from AMS/Astora and Claimants' Counsel that such amounts are subject to structured settlements in accordance with Section VII); and (3) the amount specified, if any, to other recipient(s) identified in the Certified Claims Payment List ; and

   b. transfer the amount specified, if any, from the Settlement Escrow Account to the Lien Holdback Account.

2. Within ten (10) days of receipt of a Certified Lien Resolution List, which has been approved pursuant to signature of an Authorized Person for each of AMS/Astora and Claimants' Counsel, the Escrow Agent shall, subject to the availability of funds deposited pursuant to Section V, distribute the specified amounts from the Lien Holdback Account to the lien holder(s) (if any) and/or to the Claimants' Counsel, as agent of the Claimants (except where the Escrow Agent has received prior written notice from AMS/Astora and Claimants' Counsel that such amounts are subject to structured settlements in accordance with Section VIII).

3. The Escrow Agent shall, subject to the availability of funds as described in this Section VI.A.3, distribute from the Administration Account, Administrative Fees, which are defined as follows:

   a. The Escrow Agent's fees, costs, and expenses, including professional fees, costs, wiring and transfer costs, and expenses and extraordinary costs.

   b. The distributions to pay the Administrator for its fees, costs, and expenses, including professional fees, costs, and expenses associated with tax preparation, payment, reporting and

withholding by the Administrator as described in Section IX, as approved in writing by each of Claimants' Counsel and AMS/Astora.

Provided, however, that if the available funds in the Administration Account are insufficient to pay for the above-described costs in this Section VI.A.3, such remaining costs shall, unless otherwise agreed in writing between Claimants' Counsel and AMS/Astora, be paid by Claimants' Counsel. In no event will AMS/Astora be responsible for payment of the above-described costs, or for any payment beyond the amounts specified in the Settlement Agreement.

All interest or investment income earned on the Settlement Escrow Account or the Lien Holdback Account, pursuant to Section VIII shall be transferred by the Escrow Agent to the Administration Account on a monthly basis.

B. Reversionary Interest. Astora shall have a reversionary interest in the Settlement Escrow Account (and any other accounts that may be created pursuant to the Settlement Escrow Agreement except the Lien Holdback Fund and the Administration Account) as set forth in the Settlement Agreement and for any amounts which remain in such Accounts after all distributions reflected on Certified Payment Lists for claims submitted on or before August 31, 2017 and all Administrative Fees have been paid (the "Reversionary Amount"). If Astora becomes entitled to a Reversionary Amount, AMS/Astora and Claimants' Counsel shall meet and confer regarding the amount to be returned to Astora and issue a joint written instruction to the Administrator and Escrow Agent authorizing the return of the Reversionary Amount.

C. Authorized Persons. The names of the Authorized Persons, together with their specimen signatures, shall be provided by AMS/Astora and Claimants' Counsel to the Administrator and Escrow Agent, and may be amended from time to time.

VII. DISTRIBUTIONS FOR STRUCTURED SETTLEMENTS

A. Structured Settlements. Where a Claimant or Claimants' Counsel (for the purposes of this Section VII, a "Structured Settlement Electing Party") has elected to receive specified amounts which would otherwise be distributed to Claimants' Counsel, as agent of the Claimants, pursuant to Section VI.A, in the form of a Structured Settlement,[1] (the "Structured Settlement Amount") and Authorized Persons for Claimants' Counsel and AMS/Astora have so informed the Escrow

[1] A Structured Settlement means that the Administrator, on behalf of the Settlement Escrow, agrees to pay amounts otherwise payable from the Settlement Escrow in a lump sum in the form of periodic payments over time ("Periodic Payments"), conditioned upon the assignment of such Periodic Payment obligation to a third-party assignee (the "Assignee"), which then funds the obligation to make Periodic Payments through the purchase of a funding asset from a related issuer or custodian of such funding asset.

Agent of their approval of such change in distribution in writing prior to any distribution of such amounts to the applicable Claimant pursuant to Section VI.A, the Escrow Agent shall distribute the Structured Settlement Amount only after all of the following requirements are satisfied:

1. The Administrator, on behalf of the Settlement Escrow, has assigned all obligations to make Periodic Payments to the Assignee through the Administrator's execution of a structured settlement assignment and release form which (a) has already been properly executed by all other required parties to the Structured Settlement, (b) contains no language inconsistent with this Escrow Agreement, the applicable Settlement Agreement or the Release and (c) satisfies any additional requirements agreed to by AMS/Astora and Claimants' Counsel;

2. The Assignee shall be the sole party to whom the Administrator, on behalf of the Settlement Escrow, or the Settlement Escrow owes the obligation to pay the amount being used to fund the Structured Settlement for all purposes, including, as applicable, section 130(c) of the Code or Treasury Regulation section 1.461-1(g)(1)(ii), and upon assignment by the Administrator and payment of the amount used to fund the Structured Settlement by the Escrow Agent to the Assignee, the Structured Settlement Electing Party irrevocably gives up any right, under any circumstances, to seek from the Administrator, the Escrow Agent, the Settlement Escrow or the Released Parties (as such term is defined in the applicable Settlement Agreement) (a) any further payments with regard to the Structured Settlement, including in any circumstances where, for any reason, the applicable party fails to receive all the future Periodic Payments at any time, (b) any further payments with respect to any action of the Escrow Agent, the Settlement Escrow or the Released Parties, related to the Structured Settlement, as well as (c) any further payments regarding any tax, financial or other consequences of the Structured Settlement; and

3. The Administrator has provided written confirmation to the Escrow Agent of the satisfaction of the requirements set forth in subsections 1 and 2, above.

VIII. INVESTMENT OF ESCROWED FUNDS

A. Investment; Preservation of Principal. The Escrow Agent shall invest and reinvest from time to time the Escrowed Funds in accordance with the written direction of the Administrator in: (i) any obligations of, or any obligation guaranteed as to principal and interest by, the United States of America or any agency or instrumentality thereof; or (ii) U.S. dollar denominated deposit accounts with domestic commercial or national banks, including the Escrow

Agent or an affiliate of the Escrow Agent, that have a short term issuer rating on the date of purchase of "A-1" or better by S&P, "Prime-1" or better by Moody's and "F-1" or better by Fitch and maturing no more than 360 days after the date of purchase (provided that ratings on holding companies are not considered as the rating of the bank);or (iii) money market accounts or money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Securities Act, and rated "AAAm" or "AAAm-G" or better by S&P, and "Aaa," "Aal" or "Aa2" if rated by Moody's, including any mutual fund for which the Escrow Agent or an Affiliate of the Escrow Agent serves as investment manager, administrator, shareholder servicing agent, and/or custodian. Absent the receipt of investment direction from the Administrator, the Escrow Agent shall hold the Escrowed Funds uninvested. Any investment losses realized by investment of Escrowed Funds or any portion thereof shall be charged to the Escrowed Funds. To the extent the Escrow Agent invests any funds in the manner provided for in this Section VIII, no Party hereto (including the Escrow Agent) shall be liable for any loss(es) which may be incurred by reason of any such investment (or reinvestment). Such funds should be invested such that the following investment policy is implemented, as appropriate: (i) safety of principal; (ii) zero bank balance exposure through use of custodial/trust accounts (to avoid the risk of bank deposit forfeiture); and (iii) zero sweep disbursement accounts; provided the Escrow Agent may rely conclusively upon the Administrator's written investment direction as to the suitability and legality of any directed investment and shall have no obligations with respect to the aforementioned investment policy.

B. Use of Interest or Investment Income. All interest on or income realized by investment of the Escrowed Funds or any portion hereof shall be accumulated and added to the Escrowed Funds, and further provided that any such interest or investment income earned on the Settlement Escrow Account or the Lien Holdback Account pursuant to Section VI shall be transferred to the Administration Account on a monthly basis. Any interest or investment income earned on the Administration Account shall be added to the Administration Account.

IX. TAX MATTERS

A. Settlement Escrow as a Qualified Settlement Fund. The Settlement Escrow is structured and shall be operated in a manner so that it qualifies as a "qualified settlement fund" under section 468B of the Code and Treasury Regulation sections 1.468B-1, *et seq*. Specifically, (1) the establishment of the Settlement Escrow under the terms and conditions of this Escrow Agreement is subject to Court approval, and no deposits into or distributions from the Settlement Escrow shall be made until such initial Court approval is obtained and written notice of such Court approval shall have been provided to the Escrow Agent by Claimants' Counsel; (2) the Settlement Escrow is subject to the continuing jurisdiction and supervision of the Court; (3) the Settlement Escrow is established to resolve or

satisfy claims of alleged tort or violation of law arising out of implantation of one or more AMS Pelvic Repair System Products; and (4) the Settlement Escrow is an escrow account, and its assets are, and will be, segregated from the general assets of AMS/Astora and deposited herein. The Settlement Escrow is composed of the Accounts, which together constitute a single qualified settlement fund. Consistent with the terms of the Settlement Agreements and this Escrow Agreement, the Administrator shall take all actions, and the Escrow Agent agrees to take any actions directed in writing by an Authorized Person of AMS/Astora and Claimant's Counsel to create and maintain the Settlement Escrow's status as a qualified settlement fund, and the Administrator and Escrow Agent each agree not to take any action that will adversely affect the qualification of the Settlement Escrow as a qualified settlement fund. The Administrator shall serve as the "administrator" within the meaning of Regulation Section 1.468B-2(k)(3).

B. Relation Back Election. The Administrator shall, to the extent that this Settlement Escrow has not been approved by the Court as a "qualified settlement fund" under section 468B of the Code prior to deposit by AMS/Astora into the Settlement Escrow of any amounts pursuant to Section V, timely prepare a "Regulation Section 1.468B-1 Relation Back Election" pursuant to Treasury Regulation Section 1.468B-1(j) for execution by the Administrator, and attach to the Settlement Fund's first timely-filed federal income tax return a fully executed copy of such "Regulation Section 1.468B-1 Relation Back Election".

C. Tax Preparation, Payment, Reporting, and Withholding Requirements. The Administrator shall be responsible for the timely and proper performance of the undertakings specified in the regulations promulgated under section 468B of the Code, including, but not limited to, the obtaining of an employer identification number for the Settlement Escrow; the filing of all required federal, state or local tax and information returns in accordance with the provisions of Treasury Regulation section 1.468B-2(k)-(l); any required withholding of tax (including withholding that may be required pursuant to FATCA requirements); the payment of any federal, state or local taxes (including estimated taxes) and associated tax-related penalties and interest for which the Settlement Escrow may be liable, with such amounts payable from the Administration Account subject to Section VI.A.3; responding to any questions from or audits regarding such taxes by the Internal Revenue Service or any state or local tax authority; and compliance with any other tax-related requirements (including withholding that may be required pursuant to FATCA requirements). The Administrator may retain and compensate independent, certified public accountants to consult with and advise the Administrator with respect to the preparation of any and all appropriate income tax returns, information returns or compliance withholding requirements, with such amounts payable from the Administration Account subject to Section VI.A.3. In no event shall AMS/Astora have any liability or responsibility for any amounts payable by the Settlement Escrow, the Administrator, or Escrow Agent pursuant to this Section IX, and AMS/Astora shall be indemnified and held harmless for such amounts by the Settlement Escrow.

D. Savings Provision; Failure to Qualify as a Qualified Settlement Fund.

1. Notwithstanding anything herein to the contrary, in the event that any portion of this Escrow Agreement shall at any time be considered cause for the Settlement Escrow to fail to qualify as a qualified settlement fund under section 468B of the Code together with any and all Treasury Regulations and Internal Revenue Service Notices, Announcements and directives thereunder, such offending portion of this Escrow Agreement shall be considered null, void, and of no effect, without any action by any court or by the Administrator, so that this Settlement Escrow continues to qualify as a qualified settlement fund in compliance with section 468B of the Code and the applicable administrative authority and announcements thereunder. In the event that this Section IX.D applies to render an offending Section null, void, or of no effect, the remainder of this Escrow Agreement shall not be affected thereby, and each remaining term and Section of the Escrow Agreement shall be valid and enforced to the fullest extent permitted by law.

Notwithstanding any effort, or failure, of the Escrow Agent, Administrator and the other Parties to treat the Settlement Escrow as a "qualified settlement fund" within the meaning of section 1.468B-1 of the Treasury Regulations effective as of the date hereof, any additional tax liability, interest or penalties incurred by AMS/Astora resulting from income earned by the Settlement Escrow shall be reimbursed from the Settlement Escrow in the amount of such additional tax liability, interest or penalties upon AMS/Astora's written request to the Administrator and Escrow Agent.

X. ADDITIONAL MATTERS RELATING TO DUTIES, LIABILITIES, AND RIGHTS OF ESCROW AGENT AND ADMINISTRATOR

A. Compensation. Both the Administrator and the Escrow Agent will be paid pursuant to the schedule of fees (including, to the extent of any extraordinary services performed by the Escrow Agent, fees for such extraordinary services) approved pursuant to Section VI.A.3 and promptly reimbursed such fees, costs, and expenses, including reasonable attorneys' fees and expenses suffered or incurred by the Administrator and the Escrow Agent in connection with the performance of their respective duties and obligations hereunder, including without limitation, accountancy and tax return preparation fees incurred by the Administrator in connection with the performance of the duties set forth in Section IX hereof and all actions necessary or advisable with respect thereto (including, without limitation, the payment of any professional fees and expenses related thereto). All such fees and expenses shall be paid in accordance with Section VI.A.3.

B. Preparation of Financial Statements. The Escrow Agent shall deliver to the Administrator, AMS/Astora, and Claimants' Counsel financial statements for the Settlement Escrow, including receipts, disbursements and earnings (1) upon request, as soon as possible, but no later than within ten (10) days of any such request, and (2) on a monthly basis, via email or other electronic means, as soon as possible, but no later than three (3) business days after the close of each calendar month.

C. No Implied Duties. This Escrow Agreement expressly and exclusively sets forth the duties of the Administrator and the Escrow Agent with respect to any and all matters pertinent hereto and no implied duties, responsibilities, or obligations (including, without limitation, any fiduciary or similar obligations) shall be read into this Escrow Agreement against the Administrator or the Escrow Agent. The Escrow Agent is not a party to, or bound by, the Settlement Agreement or any other agreement among the other Parties hereto, and the Escrow Agent's duties shall be determined solely by reference to this Escrow Agreement.

D. Liability and Indemnification. The Escrow Agent shall not be liable for any action taken or omitted by it, or any action suffered by it to be taken or omitted, in good faith, and in the exercise of its own best judgment, and may rely conclusively and shall be protected in acting upon any order, notice, demand, certificate, opinion or advice of counsel (including counsel chosen by the Escrow Agent), statement, instrument, report or other paper or document (not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and acceptability of any information therein contained) which is believed by the Escrow Agent to be genuine and to be signed or presented by the proper person(s). The Escrow Agent shall not be held liable for any error in judgment made in good faith by an officer or employee of the Escrow Agent unless it shall be proved that the Escrow Agent was grossly negligent in ascertaining the pertinent facts or acted intentionally in bad faith. The Escrow Agent and the Administrator, as well as their respective officers, directors, employees and agents (collectively, "Indemnified Parties") shall be indemnified by the Escrowed Funds, and held harmless against, any and all claims, suits, actions, proceedings, investigations, judgments, deficiencies, damages, settlements, liabilities and expenses (including reasonable legal fees and expenses of attorneys chosen by Escrow Agent) as and when incurred, arising out of or based upon any act, omission, alleged act or alleged omission by the Indemnified Parties or any other cause, in any case in connection with the acceptance of, or performance or non-performance by the Indemnified Parties of, any of the Indemnified Parties' duties under this Escrow Agreement, except as a result of the Indemnified Parties' bad faith, willful misconduct or gross negligence. Provided, however, that this provision does not give the Indemnified Parties any rights against AMS/Astora, which shall have no obligation or responsibility with respect to the Indemnified Parties.

E. Notices. The Escrow Agent shall not be responsible for nor shall it be its duty to

notify any party hereto or any other party interested in this Escrow Agreement of any payment required or maturity occurring under this Escrow Agreement or under the terms of any instrument deposited therewith unless such notice is explicitly provided for in this Escrow Agreement.

F. Liquidation of Investments. The Escrow Agent shall have the right to liquidate any investment held in order to provide funds necessary to make required payments under this Escrow Agreement. The Escrow Agent shall have no liability as a result of any liquidation of any investment prior to its maturity when that liquidation is necessary to provide funds to make required payments under this Escrow Agreement.

G. Validity of Instructions. The Administrator and/or Escrow Agent shall not be liable for the sufficiency, correctness, or genuineness as to form, manner of execution, or validity of any instrument deposited, or instruction given, nor as to the identity, authority or rights of any person executing the same, except as above provided. Except as limited pursuant to Section X.D, the Administrator and/or the Escrow Agent shall be protected in conclusively relying and acting upon any document which the Administrator and/or Escrow Agent in good faith believes to be genuine and what it purports to be, including, without limitation, authorizations regarding release, disbursement or retention of the Escrowed Funds pursuant to Section VI.

H. Conflicting Demands. Should Escrow Agent during the term of this Escrow Agreement receive or become aware of any conflicting demands or claims with respect to the Escrowed Funds or any part thereof, or the rights or obligations of any of the Parties hereto, or any money deposited herein or affected hereby, or in the event that the Escrow Agent, in good faith, is in doubt as to what action it should take hereunder, the Escrow Agent shall have the right to discontinue all further acts on its part until such the Escrow Agent is notified in writing by AMS/Astora and Claimants' Counsel that the conflict is resolved by AMS/Astora and Claimants' Counsel to their satisfaction. Except as limited pursuant to Section X.D, neither the Administrator nor the Escrow Agent shall be or become liable in any way or to any party for its failure or refusal to act, and the Administrator and/or the Escrow Agent shall be entitled to continue to refrain from acting until (1) all differences shall have been resolved and all doubt eliminated by agreement among all of the interested Parties, and the Administrator and/or the Escrow Agent shall have been notified thereof in writing signed by all such Parties; or (2) the rights of the adverse claimants shall have been fully and finally adjudicated in a Court assuming and having jurisdiction of the parties and money, papers and property involved herein or affected hereby.

I. Garnishment or Levy of Escrowed Funds. In the event that any of the Escrowed Funds shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the

Escrowed Funds, the Escrow Agent shall promptly notify AMS/Astora and the applicable Claimants' Counsel representing the Claimant in writing about such act, and the Escrow Agent is authorized to rely upon and comply with any such order, writ, judgment or decree which it is advised by legal counsel of its own choosing is binding upon it; and if Escrow Agent complies in good faith with any such order, writ, judgment or decree it shall not be liable to any of the Parties hereto or to any other person, firm or corporation by reason of such compliance, even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

J. Release of Escrow Agent. The retention and distribution of the Escrowed Funds in accordance with the terms and provisions of this Escrow Agreement shall fully and completely release Escrow Agent from any and all further obligations or liabilities under this Escrow Agreement, except to the extent provided in Section X.D.

K. Resignation and Removal of Escrow Agent; Appointment of Successor.

1. The Escrow Agent or any successor may resign by a written notice delivered to AMS/Astora and Claimants' Counsel specifying the effective date of such resignation, which date shall not be earlier than sixty (60) days following the receipt by both AMS/Astora and Claimants' Counsel of the notice of resignation. Such resignation shall take effect on the date specified on the notice of resignation, unless a successor escrow agent has been appointed in accordance with the provisions of this Section X.K and has accepted such appointment on an earlier date, in which case such resignation shall take effect immediately upon receipt by such successor escrow agent of the Escrowed Funds. The Escrow Agent may be removed by the joint action of AMS/Astora and Claimants' Counsel, with or without cause at any time upon thirty (30) days' prior written notice to Escrow Agent, which notice may be waived by Escrow Agent, and the Escrow Agent's removal shall be effective upon the expiration of such thirty (30) days or upon the Escrow Agent's waiver of such notice.

2. Appointment of Successor Escrow Agent. If at any time Escrow Agent shall resign, be removed, or otherwise become incapable of acting as escrow agent pursuant to this Escrow Agreement, or if at any time a vacancy shall occur in the office of Escrow Agent for any other cause, a successor agent meeting the requirements set forth in Section X.M, shall be appointed by AMS/Astora and Claimants' Counsel by a written instrument delivered to the successor agent. Further, if no such successor escrow agent has been designated for resignation or removal, the Escrow Agent may petition the Settlement Court for the appointment of a successor agent; further the Escrow Agent may pay into the Settlement Court pursuant to motion and related papers all filed under seal all monies and property remaining on deposit with Escrow Agent under this Escrow

Agreement. Upon the appointment and acceptance of any successor agent hereunder, Escrow Agent shall transfer the Escrowed Funds to its successor.

L. Resignation and Removal of Administrator; Appointment of Successor.

1. The Administrator or any successor may resign by a written notice delivered to AMS/Astora and Claimants' Counsel specifying the effective date of such resignation, which date shall not be earlier than sixty (60) days following the receipt by both AMS/Astora and Claimants' Counsel of the notice of resignation. Such resignation shall take effect on the date specified on the notice of resignation, unless a successor has been appointed in accordance with the provisions of this Section X.L and has accepted such appointment on an earlier date. The Administrator may be removed by the joint action of AMS/Astora and Claimants' Counsel, with or without cause at any time upon thirty (30) days' prior written notice to Administrator, which notice may be waived by the Administrator, and the Administrator's removal shall be effective upon the expiration of such thirty (30) days or upon the Administrator's waiver of such notice.

2. Appointment of Successor. If at any time Administrator shall resign, be removed, or otherwise become incapable of acting pursuant to this Escrow Agreement, or if at any time a vacancy shall occur for any other cause, a successor shall be appointed by AMS/Astora and Claimants' Counsel by a written instrument delivered to the successor.

M. Qualifications of Escrow Agent. The Escrow Agent, including any successor Escrow Agent, shall at all times be a bank, savings and loan association, or trust company in good standing, organized and doing business under the laws of the United States of America or a State of the United States of America, having a net worth of not less than Five Hundred Million dollars ($500,000,000), and shall be authorized under such laws to enter into and perform this Escrow Agreement. If the Escrow Agent at any time ceases to have the foregoing qualifications, Escrow Agent shall give notice of resignation in accordance with Section X.K and a qualified successor escrow agent or disbursing agent shall be appointed in accordance with Section X.K.

XI. TERMINATION OF SETTLEMENT ESCROW

The Settlement Escrow will terminate after all funds deposited in it, together with all interest earned thereon, are disbursed in accordance with the provisions of Section VI (the "Termination"). Upon Termination of the Settlement Escrow in accordance with this Section XI, the Escrow Agent and the Administrator shall be relieved of any and all further obligations and released from any and all liability under this Escrow Agreement, except as otherwise specifically

provided herein.

XII. MISCELLANEOUS

A. Notices. Any notice of other communication hereunder must be given in writing and either: (i) delivered in person; (ii) transmitted by email, telefax or other telecommunications mechanism, provided that any notice to be given is also mailed as provided in clause (iii), unless such notice is a communication pursuant to Section VI, VII, X.B, in which case notice by mail as provided in clause (iii) is not required; (iii) mailed by registered, express, or certified mail, postage prepaid return receipt requested; or (iv) delivered by a generally recognized courier or messenger service that provides written acknowledgement of receipt by addressee, postage prepaid as follows:

If to AMS/Astora, to:

Andrew Karron, Esquire
Reisman Karron Greene LLP
1700 K Street, NW Suite 200
Washington, DC 20006
Andrew.Karron@rkgattorneys.com

If to Claimants' Counsel, to:

Kirk Goza, Esquire
Goza and Honnold, LLC
11181 Overbrook Road, Suite 200
Leawood, Kansas 66211
KGoza@gohonlaw.com

If to Escrow Agent, to:

Madelyn Wallace
UMB Bank, n.a.
5910 N. Central Expwy, Ste 1900
Dallas, TX 75206

If to the Administrator, to:

Will Shapiro
[S3] Shapiro Settlement Solutions LLC
11211 Taylor Draper Lane #210
Austin, TX 78759
wshapiro@lienteam.com

or to such other address or to such other person as any Party shall have last designated by written notice to the other Parties. Each such notice or other communication shall be deemed received hereunder; (1) if given by telecommunication, when transmitted to the applicable number as specified in (or pursuant to) this Section; (2) if given by mail or courier service, three business days after such communication is dispatched, addresses as aforesaid; or (3) if given by any other means, when actually received at such address.

B. Jurisdiction. The Parties acknowledge that the Court shall retain jurisdiction over the implementation, enforcement, and performance of this Escrow Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Escrow Agreement or to the applicability of this Escrow Agreement, and that this Escrow Agreement shall be governed by and interpreted according to the substantive laws of the State of West Virginia without regard to its choice of law or conflict of laws principles.

C. Entire Agreement. This Escrow Agreement constitutes the entire agreement and understanding of the Parties hereto in respect of the matters discussed herein. Any modification of this Escrow Agreement or any additional obligations assumed by any party hereto shall be binding only if evidenced by a writing signed by each of the parties hereto. This Escrow Agreement shall be construed so as to be consistent with the terms of the Settlement Agreement and, in the event of any conflict between the terms of this Escrow Agreement and the terms of the Settlement Agreement, as between Claimants' Counsel and AMS/Astora, the terms of the Settlement Agreement shall control.

D. Assignment. This Agreement is binding upon and will inure to the benefit of the Parties hereto and their respective successors and permitted assigns, but will not be assignable, by operation of law or otherwise, by any Party hereto without the prior written consent of the other Parties.

E. Sections and Other Headings. Sections or other headings contained in this Escrow Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Escrow Agreement.

F. Amendments; Waivers. All Parties must approve any amendment to this Escrow Agreement in writing. Any waiver of any right or remedy provided for in this Escrow Agreement requires the consent of the Party waiving such right or remedy. Every amendment or waiver of any provision of this Escrow Agreement must be made in writing and designated as an amendment or waiver, as appropriate. No failure by any Party to insist on the strict performance of any provision of this Escrow Agreement or to exercise any right or remedy hereunder, will be deemed a waiver of such performance right or remedy or of any other provision of this Escrow Agreement. This Escrow Agreement shall not be modified or amended in any way that could jeopardize, impair, or modify the Settlement Escrow's qualified settlement fund status.

G. Counterparts. This Escrow Agreement may be executed in one or more counterparts, each of which counterparts shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Escrow Agreement. The Parties hereto agree that the transactions described herein may be conducted and related documents may be stored by electronic means.

H. Severability. If any provision of this Escrow Agreement is held to be unenforceable for any reason, it will be adjusted rather than voided, if possible, to achieve the intent of the Parties to the extent possible. In any event, all other provisions of this Escrow Agreement will be deemed valid and enforceable to the extent possible.

I. Force Majeure. Notwithstanding anything contained in the Escrow Agreement to the contrary, the Escrow Agent shall not incur any liability for not performing any act or fulfilling any obligation hereunder by reason of any occurrence beyond its control (including, without limitation, any provision of any present or future law or regulation or any act of any governmental authority, any act of God or war or terrorism, or the unavailability of the Federal Reserve Bank wire services or any electronic communication facility).

J. Confidentiality. All information disclosed by any Party (or its representatives), whether before or after the date hereof, in connection with the transactions contemplated by or the discussion and negotiations preceding this Escrow Agreement, to any other Party (or its representatives) will be kept confidential by such other Party and its representatives and will not be used by any such persons other than as contemplated by this Escrow Agreement, except to the extent that such information: (a) was known by the recipient when received; (b) is or hereafter becomes lawfully obtainable from other sources; (c) is necessary or appropriate to disclose to a governmental entity having jurisdiction over the Parties, or as may otherwise be required by applicable law or by the Court; or (d) to the extent such duty as to confidentiality is waived in writing by the other Parties.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Escrow Agreement to be executed on the day and year first above written. *[Signatures on following page; remainder of this page intentionally left blank]*

SO AGREED ON BEHALF OF CLAIMANTS' COUNSEL:

By: _____

Kirk Goza
Goza and Honnold, LLC
11181 Overbrook Road, Suite 200
Leawood, Kansas 66211
KGoza@gohonlaw.com

SO AGREED ON BEHALF OF AMS/ASTORA:

By: _____

Andrew Karron
Reisman Karron Greene LLP
1700 K Street, NW, Suite 200
Washington, DC 20006
Andrew.Karron@rkgattorneys.com

SO AGREED ON BEHALF OF UMB BANK, N.A. AS ESCROW AGENT

By: _____

Randy S. McPhail

Title: _____

1010 Grand Blvd, 4th Floor
Kansas City, Missouri 64106

SO AGREED ON BEHALF OF THE ADMINISTRATOR

By: _____

Will Shapiro
[S3] Shapiro Settlement Solutions
11211 Taylor Draper Lane #210
Austin, TX 78759
wshapiro@lienteam.com