

**IN THE 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
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MDL No. 2325

PRETRIAL ORDER No. 264

(Qualified Settlement Fund – Napoli Shkolnik)

Napoli Shkolnik PLLC (“*Napoli*”), as counsel for certain plaintiffs in *In Re: American Medical Systems, Inc., Pelvic Repair System Products Liability Litigation* MDL 2325 (S.D. W.Va.), has moved the Court for entry of an Order to aid in the efficient processing and administration of a confidential settlement agreement (the “*MSA*”) between Napoli and Astora Women’s Health, LLC (as successor in interest to American Medical Systems, Inc.’s women’s health business, Astora Holdings, LLC, Astora Women’s Health Holdings, LLC, and Astora Women’s Health Holdings, Inc.) (“*Astora*”).

In particular, the Motion seeks an Order: (1) approving the trust agreement (“*Napoli Shkolnik Astora Settlement Trust Agreement*”), attached hereto as Exhibit A, which establishes the Napoli Shkolnik Astora Settlement Trust (“*Settlement Trust*”); (2) determining that the Settlement Trust 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.* (“*Regulations*”) and retaining continuing jurisdiction and supervision over the Settlement Trust; (3) appointing Matthew L. Garretson as Trustee of the Settlement Trust and “administrator” of the Settlement Trust within the meaning of section 1.468B-2(k)(3) of the Regulations (the “*Administrator*”); (4) by virtue of Mr. Garretson’s designation of The Garretson

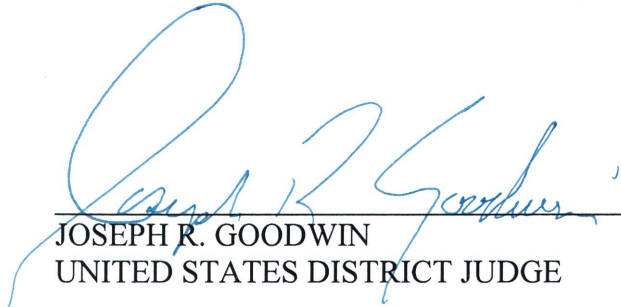
Resolution Group, Inc.'s as agent of the Trustee, appointing the Garretson Resolution Group to assist him in the administration of the Settlement Trust; and, (5) appointing Deutsche Bank as the Custodian of the Settlement Trust.

The Court, having reviewed the Motion and the Napoli Shkolnik Astora Trust Agreement, and finding good and sufficient cause therefor, hereby **FINDS** and **ORDERS** as follows:

- 1) The Unopposed Motion [ECF No. 6588] is **GRANTED**;
- 2) The Napoli Shkolnik Astora Settlement Trust ("*Settlement Trust*") is approved, as are the terms of the Napoli Shkolnik Astora Trust Agreement;
- 3) The Settlement Trust constitutes a qualified settlement fund within the meaning of section 468B of the Internal Revenue Code of 1986, as amended and Treasury Regulation sections 1.468B-1, *et seq.* The Court further retains continuing jurisdiction and supervision over the Settlement Trust;
- 4) Matthew L. Garretson is the Trustee for the Settlement Trust and "administrator" of the Settlement Trust within the meaning of section 1.468B-2(k)(3) of the Regulations (the "Administrator");
- 5) The Garretson Resolution Group, as Mr. Garretson's designated agent, shall assist Mr. Garretson in the administration of the Settlement Trust and establishment of the Settlement Trust account therein; and,
- 6) Deutsche Bank shall serve as the Custodian of the Settlement Trust.

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. 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.wvwd.uscourts.gov.”

ENTER: October 11, 2018



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

EXHIBIT A

THE NAPOLI SHKOLNIK ASTORA SETTLEMENT TRUST

ARTICLE I

ESTABLISHMENT OF THE SETTLEMENT TRUST

1-1 Creation and Name. Astora Women's Health, LLC (as successor in interest to American Medical Systems, Inc.'s women's health business, Astora Holdings, LLC, Astora Women's Health Holdings, LLC, and Astora Women's Health Holdings, Inc.) ("Astora"); together with Napoli Shkolnik, PLLC ("Claimants' Counsel"); and Matthew L. Garretson, as trustee (the "Trustee"), hereby enter into this trust agreement (the "Trust Agreement") establishing a trust under West Virginia state law, which is 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.* (such trust the "Napoli Shkolnik Astora Settlement Trust" or the "Settlement Trust").

1-2 Purpose. The purpose of the Settlement Trust is to accept, hold, and distribute funds in accordance with the confidential Master Settlement Agreement, dated as of December 21, 2017 (the "Master Settlement Agreement") between Astora and Claimants' Counsel, acting on their own behalf and on behalf of certain claimants represented by Claimants' Counsel who all have had implanted one or more AMS Pelvic Repair System Products¹ ("Implant Claimants," and each an "Implant Claimant"), or are asserting a claim on behalf of an Implant Claimant who is not capable of asserting her own claim (*e.g.*, a personal representative of an estate of a deceased Implant Claimant) (collectively, "Claimants"), as well as any consortium, derivative or assigned claimants of a Claimant, and any person or entity claiming by, through, or on behalf of a Claimant (collectively, with Claimants, the "Releasing Parties," and each a "Releasing Party"). In furtherance of this purpose, the Settlement Trust shall be administered and operated pursuant to this Trust Agreement and the Master Settlement Agreement.

1-3 Trust Estate. All assets transferred to the Settlement Trust by Astora pursuant to Section 2-1 of this Trust Agreement, and any earnings thereon, shall be referred to herein as the "Trust Estate," and administered and disbursed under the terms of this Trust Agreement and the Master Settlement Agreement.

1-4 Qualification as a Qualified Settlement Fund. The Settlement Trust 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 United States District Court for the Southern District of West Virginia, MDL 2325 (the "Court") shall approve the establishment of the Settlement Trust under the terms and conditions of this Trust Agreement and the Master Settlement Agreement pursuant to an Order (the "Approval Order"); (2) the Settlement Trust is subject to the continuing jurisdiction and supervision of the Court; (3) the Settlement Trust 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 Trust is a trust under West Virginia law, and its assets are, and will be, segregated from the general assets of Astora and deposited herein. Consistent with the terms of the Master Settlement Agreement and this Trust Agreement, the Trustee shall take any action or cause the Settlement Trust to take any action necessary to create and maintain its status as a qualified settlement fund, and the Trustee agrees not to take any action that will

¹ Unless otherwise defined herein, defined terms that begin with capital letters shall be defined as set forth in the Master Settlement Agreement.

adversely affect the qualification of the Settlement Trust as a qualified settlement fund.

1-5 Duties. The duties, powers and obligations of the Trustee of the Settlement Trust shall be as defined in the Master Settlement Agreement and this Trust Agreement.

ARTICLE II

PAYMENTS TO THE SETTLEMENT TRUST

2-1 Payment. Astora shall transfer, or cause to be transferred, to the Settlement Trust the settlement consideration specified in the Master Settlement Agreement, and at such times as are specified in the Master Settlement Agreement.

2-2 No Further Obligation. Following the contribution of the settlement consideration to the Settlement Trust in accordance with Section 2-1, Astora shall not have any further obligation to contribute to the Settlement Trust.

2-3 Nature of Contributions. All contributions by Astora to the Settlement Trust shall be made in immediately available funds.

2-4 Acceptance of Assets. To further the purposes of this Settlement Trust and the Master Settlement Agreement, the Trustee agrees to accept the contributions that Astora transfers, or causes to be transferred, to the Settlement Trust, and any earnings thereon, and the Trustee assumes all liability and responsibility for the administration and distribution of the Trust Estate, in accordance with and subject to the terms of this Trust Agreement and the Master Settlement Agreement.

ARTICLE III

DISBURSEMENTS FROM THE SETTLEMENT TRUST

3-1 Disbursements from the Settlement Trust. Distributions from the Trust Estate shall be made by the Trustee solely in accordance with the terms of the Master Settlement Agreement and this Trust Agreement.

3-2 Permissibility of Structured Settlements. The Trustee may, at the election of an Claimant (for the purposes of this Section 3-2, a “Structured Settlement Electing Party”) and in accordance with the terms of the Master Settlement Agreement, distribute amounts pursuant to Section 3-1, in the form of a “Structured Settlement,”² provided that the following requirements are satisfied:

- a) The Trustee shall not distribute any such amounts with respect to such Structured Settlement until such time as the Trustee has assigned all obligations to make Periodic Payments to the Qualified Assignee through the Trustee’s execution of a

² A “Structured Settlement” is an arrangement satisfying the requirements of section 130 of the Code pursuant to which the Trustee, on behalf of the Settlement Trust, agrees to pay amounts otherwise payable from the Settlement Trust in a lump sum in the form of periodic payments over time (“Periodic Payments”), conditioned upon the Trustee’s assignment of such Periodic Payment obligation to a qualified assignee as defined under section 130(c) of the Code (the “Qualified Assignee”), which then funds the obligation to make Periodic Payments through the purchase of a qualified funding asset as defined under section 130(c) of the Code (the “Qualified Funding Asset”).

structured settlement assignment and release form which (a) has already been properly executed by all other required parties to the Structured Settlement, (b) such Structured Settlement shall be consistent with the requirements under section 130(c) of the Code, and (c) contains no language inconsistent with this Trust Agreement, Master Settlement Agreement or the Release;

- b) The Qualified Assignee shall be the sole party to whom the Trustee or the Settlement Trust 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 and payment of the amount used to fund the Structured Settlement by the Trustee to the Qualified Assignee, the Structured Settlement Electing Party irrevocably gives up any right, under any circumstances, to seek from the Trustee, the Settlement Trust or the Released Parties (as such term is defined in the Master 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 Trustee, the Settlement Trust 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.

3-3 Reversionary Interest. Astora shall have a reversionary interest in such amounts as are set forth in the Master Settlement Agreement, which amounts shall be distributed by the Trustee to Astora in accordance with the terms of the Master Settlement Agreement. No distributions shall be made pursuant to Section 8-2 unless Astora and Claimants' Counsel agree that all required amounts have been distributed pursuant to this Section 3-3.

ARTICLE IV

POWERS OF TRUST ADMINISTRATION

4-1 General Powers of the Trustee. The Trustee is and shall act as the fiduciary of the Settlement Trust in accordance with the provisions of this Trust Agreement, the Master Settlement Agreement, and the Approval Order. The Trustee shall at all times administer the Settlement Trust and the Trust Estate in accordance with the purposes set forth in Section 1-1 above. Subject to and limited by this Trust Agreement, the Master Settlement Agreement and the Approval Order, the Trustee shall have the power to take any and all actions in the Trustee's discretion where required by this Trust Agreement or the Master Settlement Agreement, as the Trustee determines are necessary and/or appropriate to fulfill the purpose of the Settlement Trust.

4-2 Specific Powers of the Trustee. Without limiting the generality of Section 4-1 above, and except as limited herein and in the Master Settlement Agreement, the powers of the Trustee shall include the following:

- a) Retention of Trust Estate. The Trustee shall receive, hold, and administer the Trust Estate in the manner delineated in the Master Settlement Agreement and this Trust Agreement.

- b) Investments and Preservation of Principal. The Trustee shall invest and reinvest the Trust Estate in accordance with the Master Settlement Agreement and Section 5-1; provided, however, that notwithstanding any other provision in this Trust Agreement and except with respect to required disbursements as set forth in Section 3-1, the Trustee shall at all times hold, manage, and invest the Trust Estate in a manner designed to preserve the principal of the Trust Estate for the purposes set forth in this Trust Agreement.
- c) Disbursements. The Trustee shall make disbursements from the Trust Estate pursuant to Section 3-1 above. The Trustee shall not distribute any amounts from the Trust Estate other than in accordance with the Master Settlement Agreement.
- d) Payment of Administrative Costs. In accordance with Section 3-1, the Trustee may pay Administrative Costs from the amount set aside for the Administrative Allocation.
- e) Retention of Investment Advisors and Other Agents. The Trustee may engage the services of investment advisors, accountants, custodians, managers, attorneys, or other consultants or agents, as is reasonably necessary to assist with the management of investments and the administration of the Settlement Trust; provided, however, that payment of the fees and costs associated with the engagement of such investment advisors and other agents shall be in accordance with Section 3-1.
- f) Consultation with Counsel. The Trustee may from time to time consult with qualified counsel with respect to any question arising as to compliance with this Trust Agreement, and shall be fully protected, to the extent permitted by law and this Trust Agreement (including Section 6-7) in acting in reliance upon the advice of counsel.
- g) Execution of Documents. The Trustee has express authority to make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments permissible pursuant to the Master Settlement Agreement and this Trust Agreement.
- h) Litigation. Subject to the terms of Section 3-1, the Trustee may initiate or defend any litigation relating to or affecting the Settlement Trust, or the Trustee's obligations under the Settlement Trust, and initiate or defend any litigation relating to the Master Settlement Agreement, and compromise, arbitrate, or otherwise adjust claims in favor of or against the Settlement Trust.
- i) Compliance with Law. The Trustee shall comply with all requirements imposed by applicable law, rule, or regulation in conformity with the Master Settlement Agreement.

4-3 Limitation on Powers of the Trustee. The Trustee shall not take any actions inconsistent with this Trust Agreement or the Master Settlement Agreement, or which would adversely affect the qualification of the Settlement Trust as a qualified settlement fund under section 468B of the Code and Treasury Regulation sections 1.468B-1, *et seq.* This Trust Agreement shall not be construed to confer on the Trustee any authority to carry on any business

or activity for profit.

ARTICLE V

FINANCIAL MANAGEMENT AND REPORTING

5-1 Investment; Preservation of Principal. As directed in writing by Claimants' Counsel, and in a form to be agreed to by Claimants' Counsel and the Trustee, the Trustee shall invest and reinvest from time to time the Trust Estate 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 that have a short term issuer rating on the date of purchase of "A-1" or better by S&P or "Prime-1" or better by Moody's 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," "Aa1" or "Aa2" if rated by Moody's, including any mutual fund for which the Trustee or an Affiliate of the Trustee serves as investment manager, administrator, shareholder servicing agent, and/or custodian. All interest on or income realized by investment of the Trust Estate or any portion hereof shall be accumulated and added to the Trust Estate. Any investment losses realized by investment of Trust Estate or any portion thereof shall be charged to the Trust Estate. To the extent the Trustee invests any funds in the manner provided for in this Section 5-1, no Party hereto (including the Trustee) 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.

5-2 Preparation of Financial Statements and Audited Financial Records. The Trustee shall keep records of distributions from the Settlement Trust that reflect, where applicable, how those distributions correspond to Certified Payment Lists and Certified Lien Resolution Lists that have been approved pursuant to the terms in the Master Settlement Agreement. As soon as possible, but no later than the fifth business day of each month, the Trustee shall provide to Astora and Claimants' Counsel, by e-mail, copies of official bank statements from the Custodian sufficient to show the end of month balance of the Settlement Trust for the prior month, as well as amounts paid out, deposited in, transferred to, accrued as interest, assessed as fees, or otherwise moved to or from the Settlement Trust during the prior month. As soon as possible, but no later than the tenth business day of each month, the Trustee shall provide to Astora and Claimants Counsel,' by e-mail, all other financial statements for the Settlement Trust, including records maintained by the Administrator and/or Trustee reflecting how distributions and transfers link to approved Administrative Costs, each of the Claimants, and the Certified Claims Payment Lists and Certified Lien Resolution Lists approved by Astora and Claimants' Counsel. As soon as possible, but no later than the tenth business day following the end of each calendar year, the Trustee shall provide to Astora and Claimants' Counsel, by e-mail, copies of bank and financial statements for the Settlement Trust sufficient to show the end of year balance for the prior calendar year, as well as amounts paid out, deposited in, transferred to, accrued as interest, assessed as fees, or otherwise moved to or from the Settlement Trust during the prior calendar year. The Trustee shall also, upon request, prepare, and deliver by e-mail to Astora and Claimants' Counsel, within

ten days of any such request, financial statements for the Settlement Trust, including receipts, disbursements, earnings, or such other additional detail as may be requested.

ARTICLE VI

TRUSTEE

6-1 Trustee Independence. The Trustee is, and shall be, independent of Astora and Claimants' Counsel.

6-2 Initial Trustee. The initial Trustee of this Settlement Trust is Matthew L. Garretson (the "Initial Trustee").

6-3 Resignation or Removal. The Trustee may resign for cause or no cause at any time upon written notice delivered to Astora, Claimants' Counsel, and the Court, and the Trustee's service terminates immediately upon death. The Trustee may be removed by joint motion made by Astora and Claimants' Counsel, and approved by the Court.

6-4 Appointment of Successor Trustee. Astora and Claimants' Counsel shall have the power to jointly nominate a successor individual or corporate Trustee, for approval by the Court. If a successor Trustee is not jointly nominated within sixty (60) calendar days of resignation, removal or death of the Trustee, the Court shall have the power to appoint a corporate Trustee qualified under local Court rules to perform service as successor Trustee from five (5) nominees of Astora and Claimants' Counsel. Unless otherwise ordered by the Court, acceptance of appointment as a successor Trustee shall be in writing and shall become effective upon receipt by the Court of notice of such acceptance. Immediately upon approval by the Court of, and acceptance of the office by, any successor Trustee, all rights, titles, duties, obligations, powers, and authority of the predecessor Trustee under this Trust Agreement shall be vested in and undertaken by the successor Trustee without any further act being required.

6-5 Compensation and Expenses of Trustee. The Trustee will be paid and promptly reimbursed such fees, costs, and expenses from the Administrative Allocation, including reasonable attorneys' fees and expenses suffered or incurred by Trustee in connection with the performance of its duties and obligations hereunder, including without limitation, accountancy and tax return preparation fees incurred in connection with the performance of the duties set forth in ARTICLE VII hereof and all actions necessary or advisable with respect thereto (including, without limitation, the payment of any professional fees and expenses related thereto).

6-6 Preservation of Record of Changes to Trustee. A copy of each instrument of resignation, removal, appointment, and acceptance of appointment shall be attached to an executed counterpart of this Trust Agreement in the custody of the Court.

6-7 Indemnification. Each Trustee, whether initially named or appointed as a successor Trustee, acts as a Trustee and not personally. With respect to any contract, obligation, or liability made or incurred by the Trustee in good faith, while the Trustee is complying with the terms of this Trust Agreement or any valid Court order, all persons shall look solely to the Settlement Trust and not to the Trustee personally. The Trustee shall not incur any liability, personal or

corporate, of any nature in connection with any act or omission of the Trustee in the administration of the Settlement Trust or otherwise pursuant to this Trust Agreement, unless the Trustee commits fraud, acts negligently, or otherwise breaches its fiduciary duties or a term of its appointment. The Trustee shall be indemnified and held harmless by the Master Settlement Agreement, so long as the Trustee complies with the terms of the Master Settlement Agreement and this Trust Agreement, the prudent investor rule and any valid Court order, unless the Trustee commits fraud, acts negligently or otherwise breaches its fiduciary duties or term of its appointment. This indemnification and hold-harmless provision shall cover all expenses reasonably incurred by such Trustee in defense of the aforementioned acts or omissions of the Trustee; provided, however, that this provision does not give the Trustee any rights against Astora, which shall have no obligation or responsibility with respect to the Trustee.

ARTICLE VII

TAX ISSUES

7-1 Generally. As set forth in Section 1-4 above, the Settlement Trust 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.* Consistent with the terms of the Master Settlement Agreement and this Trust Agreement, the Trustee (a) shall take any action or cause the Settlement Trust to take any action necessary to create and maintain its status as a qualified settlement fund, and (b) the Trustee shall take no actions that will adversely affect the qualification of the Settlement Trust as a qualified settlement fund. The Trustee shall serve as the “administrator” within the meaning of Regulation Section 1.468B-2(k)(3).

7-2 Tax Preparation, Payment, Reporting, and Withholding Requirements. In the Trustee’s role as “administrator” of the Settlement Trust within the meaning of Treasury Regulation section 1.468B-2(k)(3), the Trustee 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 Trust; 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; the payment of any federal, state or local taxes (including estimated taxes) and associated tax-related penalties and interest for which the Settlement Trust may be liable, subject to Court approval in accordance with Section 3-1; 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. The Trustee may, in accordance with Sections 3-1 and 4-2, retain and compensate independent, certified public accountants to consult with and advise the Trustee with respect to the preparation of any and all appropriate income tax returns, information returns, or compliance withholding requirements. In no event shall Astora have any liability or responsibility for any amounts payable by the Settlement Trust or Settlement Trustee, including pursuant to this Section 7-2, and Astora shall be indemnified and held harmless for such amounts by the Settlement Trust.

7-3 Savings Provisions. Notwithstanding anything herein to the contrary, in the event that any portion of this Trust Agreement shall at any time be considered to cause the Settlement Trust 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 Trust Agreement shall be considered null, void, and of no effect, without any action by any court or by the administrator, so that this Settlement Trust 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 7-3 applies to render an offending Section null, void, or of no effect, the remainder of this Trust Agreement shall not be affected thereby, and each remaining term and Section of the Agreement shall be valid and enforced to the fullest extent permitted by law. Further, notwithstanding any effort or failure of the Trustee and the other Parties to treat the Settlement Trust 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 Astora resulting solely from the income earned by the Settlement Trust and for no other reason, Astora shall be reimbursed from the Trustee in the amount of such additional tax liability, interest or penalties resulting from the income earned by the Settlement Trust upon Astora’s written request to the Trustee. If required, the “administrator” will timely prepare a “Regulation section 1.468B-1 Relation Back Election” pursuant to, and in compliance with, Treasury Regulation section 1.468B-1(j) for execution by Astora and the “administrator”, and attach to the Settlement Trust’s first federal income tax return a fully executed copy of such “Regulation section 1.468B-1 Relation Back Election.” The “administrator” will also timely forward a copy of the fully executed “Regulation section 1.468B-1 Relation Back Election” to Astora within ten (10) business days of execution.

ARTICLE VIII

TERMINATION AND WINDING UP

8-1. Generally. The Settlement Trust shall be terminated upon the occurrence of both of the following: (a) no additional amounts are distributable from the Settlement Trust in accordance with the Master Settlement Agreement (either because no Trust Estate remains in the Settlement Trust, or because all of the Settlement Trust’s obligations have been discharged pursuant to the Master Settlement Agreement), and (b) the Court has approved termination of the Settlement Trust, pursuant to petition of Astora, Claimants’ Counsel or the Trustee. Should Astora, Claimants’ Counsel, or the Trustee determine that the Settlement Trust may be properly terminated pursuant to this ARTICLE VIII, such party may submit a petition for termination of the Settlement Trust to the Court. After reviewing the petition and in accordance with the Master Settlement Agreement, the Court may terminate the Settlement Trust or may order the Settlement Trust to undertake such further actions as the Court deems necessary and appropriate pursuant to the Master Settlement Agreement. Subject to the Master Settlement Agreement as implemented by Court order, the Trustee shall finalize distributions from the Trust Estate in accordance with ARTICLE III and Section 8-2. The Trustee is authorized, upon such final distribution of the Trust Estate, to take appropriate steps to wind down the Settlement Trust and thereafter the Trustee is discharged from any further responsibility with respect to the Settlement Trust.

8-2 Distribution of Accrued Income. Any accrued but undistributed income remaining after distributions have been paid in accordance with ARTICLE III, including Section 3-3 thereof, shall inure to the benefit of Claimants, provided that any distributions of income to the Claimants shall only be made if the Astora and Claimants’ Counsel agree, based on the recommendation of the Trustee, that it is cost-effective to do so. If the Trustee determines that distributing excess income to Claimants is not cost-effective, then the Trustee shall notify Astora

and Claimants' Counsel of such determination and upon receipt of written agreement by Astora and Claimants' Counsel, the Trustee may distribute such excess income to a charity, as recommended by Claimants' Counsel and approved by Astora, under the *cy pres* doctrine, or take such other action as the Trustee determines is appropriate and that Astora and Claimants' Counsel have agreed to in writing.

ARTICLE IX

GENERAL PROVISIONS

9-1 Governing Law. This Trust Agreement creates a trust under the laws of the State of West Virginia, and the validity, construction, and interpretation of this Trust Agreement, and the rights created hereunder, shall be governed by the laws of the State of West Virginia without regard to choice of law provisions, except that all matters of federal tax law and the Settlement Trust's compliance with section 468B of the Code and the Treasury Regulations promulgated thereunder shall be governed by federal income tax law.

9-2 Number, Gender, Headings, and Construction. As used in this Trust Agreement, words in the singular include words in the plural and words in the plural include the singular, and the masculine and neuter genders shall be deemed to include the masculine, feminine, and neuter. The descriptive headings for each article of this Trust Agreement shall not affect the interpretation or legal efficacy of this Trust Agreement. This Trust Agreement shall be construed so as to be consistent with the terms of the Master Settlement Agreement and, in the event of any conflict between the terms of this Trust Agreement and the terms of the Master Settlement Agreement, the terms of the Master Settlement Agreement shall control.

9-3 Counterparts. This Trust Agreement may be executed in two or more counterparts, whether by electronic signature delivered by electronic mail, facsimile, or wet signature, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

9-4 Severability. Should any provision of this Trust Agreement be determined to be unenforceable, it will be adjusted rather than voided, if possible, to achieve the intent of the Parties to the extent possible. In any event, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of this Trust Agreement.

9-5 Jurisdiction. The Settlement Trust is subject to the continuing jurisdiction of the Court, and the Parties accept jurisdiction of the Court for purposes of the Trust Agreement.

9-6 Amendments, Alterations, and Revocation. The Settlement Trust may be amended or altered from time to time, or revoked by an instrument in writing executed by all of Astora, Claimants' Counsel and the Trustee, and approved by Order of the Court.

9-7 Entire Agreement; No Waiver. This Trust Agreement and the Master Settlement Agreement together contain the entire agreement of the Parties relating to the subject matter of this Trust Agreement, and other than the Master Settlement Agreement, this Trust Agreement supersedes any prior oral or written agreements concerning the subject matter hereof. This Trust Agreement shall be construed so as to be consistent with the terms of the Master Settlement

Agreement and, in the event of any conflict between the terms of this Trust Agreement and the terms of the Master Settlement Agreement, the terms of the Master Settlement Agreement shall control. No failure to exercise or delay in exercising any right, power, or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power, or privilege hereunder preclude any further exercise thereof or of any other right, power, or privilege. The rights and remedies herein provided are cumulative and are not exclusive of rights under law or in equity.

[Signatures on following page; remainder of this page intentionally left blank]

IN WITNESS WHEREOF, this eleven (11) page Trust Agreement has been executed by Astora as Settlor, Claimants' Counsel, and the Trustee all as of the date indicated on the cover page above.

SO AGREED ON BEHALF OF ASTORA, AS SETTLOR:

By: _____
Ethan P. Greene, Esquire
Reisman Karron Greene LLP
Suite 200
1700 K Street NW
Washington, D.C. 20006

SO AGREED ON BEHALF OF NAPOLI SHKOLNIK, PLLC:

By: _____
Paul Napoli
Napoli Shkolnik, PLLC
360 Lexington Avenue, 11th Floor
New York, NY 10017

SO AGREED ON BEHALF OF MATTHEW L. GARRETSON:

By: _____
Matthew L. Garretson
Trustee and Administrator
The Garretson Resolution Group
6281 Tri-Ridge Blvd, Suite 300
Cincinnati, OH 45140