

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

**IN RE: BOSTON SCIENTIFIC CORP.
PELVIC REPAIR SYSTEMS
PRODUCTS LIABILITY LITIGATION**

MDL NO. 2326

**PRETRIAL ORDER # 147
(Order Re: Qualified Settlement Fund Sub-Account –
Boston Scientific Corporation & The Levensten Law Firm, P.C.)**

Pending is an Unopposed Motion for Approval of Qualified Settlement Fund Sub-Account, filed June 2, 2016. [ECF No. 1417]. The Levensten Law Firm, P.C. (“Levensten”), as counsel for certain Plaintiffs in this MDL 2326, 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 Levensten and Boston Scientific Corporation and its related and affiliated entities (“BSC”) as defined in the MSA (collectively, the “Parties”) to resolve the claims of those certain Plaintiffs against BSC, relating to BSC pelvic products.


In particular, the Motion seeks an Order (1) approving the Amended and Restated Master Escrow Agreement (the “Master Escrow Agreement”), attached hereto as Exhibit A, which amends and restates the Escrow Agreement approved by Order of this Court in MDL 2187 on December 8, 2015, and (2) approving the creation of the Levensten TVM Settlement Fund BSC Sub-Account (the “BSC Sub-Account”).

The Court, having reviewed the Unopposed Motion for Approval of Qualified Settlement Fund Sub-Account, and finding good and sufficient cause, **FINDS** and **ORDERS** as follows:

- 1) The Unopposed Motion is **GRANTED**;
- 2) The terms of the Master Escrow Agreement are approved; and
- 3) The creation of the BSC Sub-Account within the Levensten TVM Settlement Fund is approved.

The Court **DIRECTS** the Clerk to file a copy of this order in 2:12-md-2326 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-05045. 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: June 6, 2016



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

Exhibit A

BSC SUB-ACCOUNT ADDENDUM

This **BSC SUB-ACCOUNT ADDENDUM** is made and entered into as of the last date signed below by and between Levensten Law Firm, P.C. (“*Levensten*”) and The Garretson Resolution Group, Inc. d/b/a Garretson Resolution Group (the “*Administrator*”).

WHEREAS, Levensten and the Administrator have previously entered into an Amended and Restated Master Escrow Agreement dated June __, 2016 (“*Master Escrow Agreement*”) for the purpose of establishing the Levensten TVM Settlement Fund (“*QSF*”) as a qualified settlement fund to resolve tort claims by the Claimants against certain Settling Defendants arising out of injuries related to pelvic implants;

WHEREAS, the Master Escrow Agreement provides for the creation of Sub-Accounts within the QSF for each Settling Defendant following (a) the execution of a settlement agreement, (b) approval of the creation of the Sub-Account by the court, and (c) the execution of a Sub-Account Addendum;

WHEREAS, Levensten has entered into a Master Settlement Agreement (“*MSA*”) with Boston Scientific Corporation and its related and affiliated entities (collectively, “*BSC*”) on behalf of certain Claimants to resolve certain tort claims arising out of injuries related to the BSC pelvic implants in exchange for the payment by BSC of the sum set forth in the MSA (the “*Settlement Proceeds*”);

WHEREAS, the MSA sets forth the terms and conditions: (i) governing the creation of an account, to be established as a “qualified settlement fund” (as defined in *Treas. Reg.* § 1.468B-1(a)); and (ii) governing the deposit of the Settlement Proceeds into that account by BSC, to be retained therein and distributed therefrom in accordance with the terms of the MSA;

WHEREAS, in an Order dated June __, 2016 (the “*BSC Order*”) in *In Re: Boston Scientific Corp. Pelvic Repair Systems Products Liability Litigation*, MDL 2326, the U.S. District Court for the Southern District of West Virginia, Charleston Division (the “*Court*”), approved the creation of the BSC Sub-Account within the QSF; and

WHEREAS, the parties desire to enter into this BSC Sub-Account Addendum for the purpose of creating the BSC Sub-Account within the QSF.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements contained herein, the Administrator and Levensten agree as follows.

1. **Defined Terms.** All capitalized terms not defined herein shall have the meanings set forth in the MSA, Master Escrow Agreement, and BSC Order.

2. **Creation of Sub-Account.** The BSC Sub-Account is hereby created as a Sub-Account within the QSF pursuant to the terms of the Master Escrow Agreement. The BSC Sub-Account shall be administered in accordance with the MSA, the Master Escrow Agreement, the BSC Order, and this BSC Sub-Account Addendum.

3. **Deposit.** BSC shall deposit the Settlement Proceeds into the QSF's BSC Sub-Account in accordance with the MSA. Upon deposit of the Settlement Proceeds, the Settlement Proceeds shall become a Deposit subject to all of the terms and conditions set forth in the Master Escrow Agreement.

4. **Disbursement of Settlement Proceeds.**

- (a) The Administrator shall not be permitted to instruct the Custodian to disburse any income or principal from the BSC Sub-Account to or for the benefit of Claimants until all of the following conditions have been satisfied: (i) all applicable terms and conditions of the MSA have been met, (ii) BSC has been provided with fully executed original conforming releases, the Individual Allocated Amounts for all Claimants, and proof of lien resolution or adequate holdbacks, and (iii) Levensten and BSC, through its counsel, have provided express written approval or authorization of the disbursement.
- (b) The Administrator shall initiate the disbursement process by periodically sending Levensten a holdback report for all Claimants who have been determined by the Lien Resolution Administrator to be eligible for payment. The holdback report shall include the Individual Allocated Amounts for all Claimants included on the holdback report. Levensten shall remove all Claimants from the holdback report who have not satisfied all terms and conditions of the MSA or have not provided a fully executed original release to BSC, and shall send the updated holdback report to the Administrator. The sending of the updated holdback report by Levensten to the Administrator shall constitute Levensten's express written approval for the Administrator to disburse funds to or for the benefit of Claimants in accordance with the updated holdback report. The Administrator will then send the updated holdback report to BSC, through its counsel, for approval. The Administrator shall be authorized to disburse funds to or for the benefit of Claimants in the amounts set forth on the updated holdback report (as amended by BSC, if applicable) upon receipt of express written approval or authorization of the updated holdback report by BSC, through its counsel, which approval may be provided by email.
- (c) Notwithstanding the foregoing, the Administrator may, without the express written approval or authorization described above, instruct the Custodian to disburse income and principal for the purpose of paying any taxes, fees, costs, and expenses of the Sub-Account in accordance with Sections 15 and 20 of the Master Escrow Agreement.

5. **Termination of Sub-Account.** Upon final distribution to the Claimants of the BSC Sub-Account Deposit, and as long as the parties do not expect further Deposits to be received in the BSC Sub-Account, the Administrator shall take appropriate steps to wind down the BSC Sub-Account and thereafter be discharged from any further responsibility with respect

to the BSC Sub-Account. Upon completion of such disbursement of all of the Deposit and such winding down as specified herein, this BSC Sub-Account Addendum shall terminate.

6. **Agreement May Be Executed in Counterparts.** This BSC Sub-Account Addendum may be executed in counterparts, whether by original, facsimile or electronic signature, all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Administrator and Levensten have executed this BSC Sub-Account Addendum as of the dates set forth below:

Scott Levensten, as authorized agent of
Levensten Law Firm, P.C.

Signature

Date

Sylvius von Saucken, Fiduciary, as
authorized agent of Garretson Resolution
Group (Administrator).

Signature

Date