

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

IN RE: COLOPLAST CORP. PELVIC
SUPPORT SYSTEMS PRODUCTS
LIABILITY LITIGATION

MDL No. 2387

HONORABLE JOSEPH R. GOODWIN

**PRETRIAL ORDER # 114
(Order Approving the Davis & Crump TVM Qualified Settlement Fund)**

Pending is an Unopposed Motion for Approval of Qualified Settlement Fund, filed September 14, 2016 [ECF No. 698]. Davis & Crump P.C. ("Davis & Crump"), as counsel for certain Plaintiffs in this MDL 2387, has 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 Davis & Crump and Defendant Coloplast Corp. and its related and affiliated companies ("Coloplast") (Davis & Crump and Coloplast, together, the "Parties") to resolve the claims of those certain Plaintiffs (clients of Davis & Crump), as against Coloplast, relating to the implant of Coloplast pelvic mesh products.

In particular, the Unopposed Motion seeks an Order: (1) approving the Master Escrow Agreement (the "Escrow Agreement"), attached hereto as Exhibit A, which creates the Davis & Crump TVM Settlement Fund (the "Settlement Escrow"), (2) where the Court retains continuing jurisdiction and supervision over the Settlement Escrow, (3) approving the creation of the Coloplast Sub-Account and the Coloplast Sub-Account Addendum to the Escrow Agreement, and (4) determining that 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 its accompanying Treasury Regulation Sections 1.468B-1 *et seq.*

The Motion also requests that other pelvic mesh settlements be afforded the opportunity to be efficiently administered using the same process such that Sub-Accounts be created, per settlement with different defendants, using a single qualified settlement fund, for the certain Plaintiffs represented by Davis & Crump to minimize maintenance costs, as being in the best interests of Plaintiffs.

The Court, having reviewed the Motion and the Escrow Agreement, and finding good and sufficient cause, **FINDS** and **ORDERS** as follows:

- 1) The Unopposed Motion is **GRANTED**.
- 2) The terms of the Escrow Agreement are approved.
- 3) The terms of the Coloplast Sub-Account Addendum and the creation of the Coloplast Sub-Account are approved.
- 4) The Settlement Escrow constitutes a qualified settlement fund within the meaning of Section 468B of the Internal Revenue Code of 1986, as amended, and its accompany Treasury Regulations under Section 1.468B-1 *et seq.*
- 5) The Court will retain continuing jurisdiction and supervision over the Settlement Escrow, following the terms of the Escrow Agreement.
- 6) The Court approves the selection of The Garretson Resolution Group, Inc., as Escrow Agent. The Escrow Agent shall administer the Settlement Escrow pursuant to the terms and conditions of the Escrow Agreement.
- 7) The Court approves the designation of Evolve Bank and Trust, as the

Custodian that will hold the funds subject to the Escrow Agreement.

8) Settlements for Davis & Crump Plaintiffs may use a single qualified settlement fund to consolidate tax reporting, tax return preparation, and to minimize maintenance costs, using separate Sub-Accounts for pelvic mesh products manufactured by those separate defendants, beginning with Coloplast, listed in the Motion.

The Court **DIRECTS** the Clerk to file a copy of this order in 2:12-md-02387 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 2:16-08437. 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: September 15, 2016



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

EXHIBIT A

MASTER ESCROW AGREEMENT

THIS MASTER ESCROW AGREEMENT is made and entered into as of the last date signed below by and between Davis & Crump, P.C. (“*Davis & Crump*”) and The Garretson Resolution Group, Inc. d/b/a Garretson Resolution Group (the “*Administrator*”).

WHEREAS, in Pretrial Order # [REDACTED] (Order Approving the Davis & Crump TVM Qualified Settlement Fund dated [REDACTED], 2016) (“*QSF Order*”) in *In Re: Coloplast Corp. Pelvic Support Systems Product Liability Litigation*, MDL No. 2387, the U.S. District Court for the Southern District of West Virginia, Charleston Division (the “*Court*”), approved the establishment of the Davis & Crump TVM Settlement Fund (the “*QSF*”) as a qualified settlement fund, approved this Master Escrow Agreement establishing the QSF, and approved the creation of sub-accounts within the QSF for settlements between settling plaintiffs represented by Davis & Crump (“*Claimants*”) and various defendants (each, a “*Settling Defendant*”) for the purpose of resolving tort claims arising out of injuries related to pelvic implants;

WHEREAS, the purpose of this Master Escrow Agreement is to establish the 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, pursuant to the terms of confidential master settlement agreements (each, an “*MSA*”) entered into with such Settling Defendants, and to provide for the creation of sub-accounts within the QSF for each MSA with a Settling Defendant; and

WHEREAS, the Administrator has agreed to serve as the administrator and escrow agent for the QSF and all of its sub-accounts pursuant to the terms of this Master Escrow Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements contained herein, the Administrator and Davis & Crump agree as follows:

1. **Intent and Purpose of the QSF.** The QSF is being established pursuant to order of the Court to complete the settlement process established to resolve or satisfy one or more contested claims that have resulted or may result from an event (or a related series of events) that has occurred and that has given rise to at least one claim asserting liability arising out of a tort, breach of contract, or violation of law. The QSF is subject to the continuing jurisdiction of the Court and is intended to qualify as a “qualified settlement fund” as defined in *Treas. Reg. § 1.468B-1(a)*. The purpose of the QSF includes, but is not necessarily limited to, (i) receiving, holding, and investing Deposits (as defined in Paragraph 7 below) from each Settling Defendant pursuant to the terms of the MSA; (ii) implementing fund settlement agreements (as appropriate) in accordance with their terms, and (iii) distributing amounts in accordance with the MSA for those Claimants who qualify for such distributions out of the QSF.

2. **Creation of Sub-Accounts.** It is the intention of the parties that this QSF shall be used for the resolution of tort claims against multiple Settling Defendants for pelvic implant injuries suffered by the Claimants. Following the execution of an MSA, a court order approving the creation of a sub-account, and the execution of a Sub-Account Addendum (in the form attached hereto as Exhibit 1), a new sub-account shall be created within the QSF for each settlement with a

Settling Defendant (“**Sub-Account**”). The funds in each Sub-Account shall be segregated in the books and records of the Administrator, and the funds in each Sub-Account shall be dedicated solely to the fulfillment of the specific MSA for which it is established.

3. **Incorporation and Primary of MSA and Sub-Account Addenda.** For each Sub-Account, the terms and conditions of the Sub-Account Addendum and MSA are incorporated into this Master Escrow Agreement in their entirety by reference, and each party hereto agrees to perform the duties and obligations of such party as set forth in the MSA. The MSA, the relevant Sub-Account Addendum, and this Master Escrow Agreement are referred to collectively herein as the “**Governing Documents**”. To the extent that there is any inconsistency among the terms of the Governing Documents, the terms of the MSA shall control over the terms of the Sub-Account Addendum and this Master Escrow Agreement, and the terms of the Sub-Account Addendum shall control over the terms of this Master Escrow Agreement.

4. **Administrator.**

(a) Appointment and Acceptance. Consistent with the terms of the QSF Order, Davis & Crump hereby appoints the Administrator to serve, and the Administrator agrees to serve, (a) as the “administrator” (as defined in *Treas. Reg.* § 1.468B-2(k)(3)) for the QSF and (b) as the escrow agent hereunder with respect to each Deposit. The term “**Administrator**” hereunder shall refer to both functions.

(b) Resignation or Removal. The Administrator may resign hereunder upon providing thirty (30) days’ prior written notice to Davis & Crump. The Administrator may be removed by Davis & Crump, with or without cause, at any time upon thirty (30) days prior written notice to the Administrator. Upon the effective date of such resignation or removal, all obligations of the Administrator hereunder shall cease and terminate.

5. **Custodian.**

(a) Appointment. Consistent with the terms of the QSF Order, Davis & Crump hereby appoints Evolve Bank & Trust as the custodian for all Deposits into the QSF pursuant to the terms of this Master Escrow Agreement (“**Custodian**”).

(b) Resignation or Removal. The Custodian may resign by providing thirty (30) days’ prior written notice to the Administrator. In addition, the Administrator retains the right to remove the Custodian with or without cause. Upon resignation or removal of the Custodian, the Administrator may designate a successor Custodian in consultation with Davis & Crump. Following the resignation or removal of the Custodian and the appointment of a successor, the Administrator shall direct the terminating Custodian to deliver all funds in the QSF to the successor Custodian designated by the Administrator.

6. **No Authority to Conduct Business.** The purpose of the QSF is limited to the matters set forth in Paragraph 1 hereof, and this Master Escrow Agreement shall not be construed to confer upon the Administrator or the Custodian any authority to carry on any business or activity for profit other than the holding, investment, and disbursement of each Deposit by the Custodian in accordance with the terms of the MSA and this Master Escrow Agreement.

7. **Deposit.** Following execution of a Sub-Account Addendum by all parties hereto, the Settling Defendant shall transfer the settlement proceeds set forth in the MSA (the “*Deposit*”) to the Custodian, to be held by the Custodian in the appropriate Sub-Account in accordance with the terms of the Governing Documents and any further order of the Court. The Administrator shall notify Davis & Crump of each Deposit within three (3) business days. Subject to and in accordance with the terms and conditions of the Governing Documents and any further order of the Court, the Administrator shall cause the Custodian to receive, hold in escrow, invest, and release or distribute each Deposit in accordance with the terms of the Governing Documents.

8. **Investment of the Deposit.**

(a) Unless otherwise ordered by the Court, all monies received by the QSF, which include all principal and interest earned thereon, shall be held by the Custodian for the benefit of and titled in the name of the QSF and invested in instruments/securities comprised of (i) United States Agency, Government Sponsored Enterprises or Treasury securities or obligations (or a mutual fund invested solely in such instruments); (ii) cash equivalent securities including SEC registered money market funds and collateralized money market accounts; and/or (iii) deposit and similar interest-bearing, or non-interest bearing accounts subject to Federal Depository Insurance Corporation protections as available.

(b) The Custodian shall be responsible for any and all investment-related decisions, following the instructions of the Administrator and/or its investment advisor, such that the following investment policy is implemented: (i) safety of principal; (ii) zero bank balance exposure; and/or (iii) the use of zero sweep disbursement accounts to ensure funds remain in custodial or fully insured accounts to avoid an impermissible risk of loss should the financial institution holding the funds fail.

(c) All interest and other earnings on each Deposit shall become a part of that Sub-Account’s Deposit for all purposes.

(d) Any losses incurred as a result of the investing or other handling of the Deposit shall not be recoverable from any Settling Defendant, and the Settling Defendant and its counsel shall have no responsibility for the performance of the Custodian or the Administrator.

9. **Claimants’ Interests in the Deposit.** The Deposit is the sole property of the QSF. This Master Escrow Agreement shall not operate to make any portion of the Deposit available to Claimants in any fashion, except as specifically set forth in the applicable MSA. To the extent possible, the terms of this Master Escrow Agreement shall be construed so as to prevent Claimants from being in constructive receipt, as determined under federal income tax principles, of any amounts held by the QSF prior to the time when the funds allocated to an individual Claimant’s settlement have been released from the QSF in accordance with the terms of the Governing Documents.

10. **Disbursement of the Deposit.**

(a) The QSF, by and through the Administrator, shall only make payments to Davis & Crump, the Claimants, or such other claimants to the QSF with valid claims and/or liens. All payments pursuant to a specific MSA shall be made only from that MSA's Sub-Account.

(b) The QSF shall be authorized to distribute from each Sub-Account all attorneys' fees and litigation expenses to counsel for the Claimants, consistent with existing contingency fee contracts, to the extent required by law, or pursuant to a court order.

(c) The Custodian may only distribute income or principal from the QSF upon instructions of the Administrator (which instructions shall be given only in accordance with the terms of the Governing Documents) or, if requested, upon the order of the Court upon the Unopposed Motion of the parties.

(d) In directing the Custodian to make disbursements of the Deposit from any Sub-Account, the Administrator shall comply with the terms of the applicable MSA and/or any future order of the Court. Such disbursements may take the form of lump sum distributions and/or periodic payments as specified in paragraph 13 of this Master Escrow Agreement.

11. **Use of Interest or Investment Income.** To the extent any Sub-Account holds any excess interest or investment income following the payment of all applicable fees, expenses, and taxes, the Administrator may authorize a distribution of such excess income to the Claimants of that Sub-Account on a pro-rata basis, based on their respective percentage interests in the Sub-Account's Deposit.

12. **Restriction on Release of Funds.** Notwithstanding anything herein to the contrary, no funds allocated to an individual Claimant's settlement may be released from the QSF until the terms and conditions of the MSA have been satisfied.

13. **Structured Settlements.** The QSF, by and through the Administrator, may purchase and assign any structured settlements created under any release agreements entered into between the Administrator and the Claimant. The Administrator shall also be authorized to enter into non-qualified assignments for the convenience of the Claimants to the extent that attorneys' fees are to be paid as part of their obligations under existing contingency fee agreements¹. Any structured settlement annuity contract shall be issued by a life insurance company that is rated A+ or better by A.M. Best Company.

14. **Reports and Accounting.** The Administrator shall provide to Davis & Crump, upon request, monthly and annual statements that shall include a statement of receipts, investment earnings, interest, and disbursements. Upon the request of a Settling Defendant, the Administrator

¹ 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. Where attorney fees are to be deferred and paid out over time, Structured Settlement Payments are non-qualified, as they do not meet the requirements of Section 130(c) of the Internal Revenue Code. In those cases, the attorneys would receive the benefits of a non-qualified funding asset as part of deferred compensation, for the convenience of their clients (claimants to the Sub-Account).

may provide the Settling Defendant a statement for that Settling Defendant's Sub-Account, including receipts, investment earnings, interest, and disbursements.

15. **Tax Matters.** Within five (5) business days of receipt of the signed QSF Order, the Administrator shall obtain a federal Taxpayer Identification Number for the QSF. All taxes on the income of the QSF and expenses and costs incurred in connection with the taxation of the QSF (including, without limitation, the expenses of tax attorneys and accountants) shall be paid out of the QSF, shall be considered to be a cost of administration of the settlement, and shall be paid as instructed by the Administrator. All payments of taxes, costs, and expenses shall be made only out of the Sub-Account to which such taxes, costs, and expenses relate. Taxes, costs and expenses that relate to the QSF as a whole shall be paid proportionally by each Sub-Account. Upon receipt of a Deposit by the Custodian, the Administrator shall promptly take all steps necessary for qualifying the QSF as a "qualified settlement fund" within the meaning of *Treas. Reg.* § 1.468B-1 and in accordance with the MSA. These obligations include, without limitation, the following:

(a) Regulation § 1.468B-3 Statement. The Administrator will prepare a "Regulation § 1.468B-3 Statement" pursuant to *Treas. Reg.* § 1.468B-3(e) on behalf of each Settling Defendant and provide copies to Settling Defendant's counsel for review and approval. The "Regulation § 1.468B-3 Statement" may be a joint statement as permitted under *Treas. Reg.* § 1.468B-3(e)(2)(ii).

(b) Regulation § 1.468B-1 Relation Back Election. If required, the Administrator will prepare and attach to the income tax return of the QSF a "Regulation § 1.468B-1 Relation Back Election" pursuant to *Treas. Reg.* § 1.468B-1(j) for execution by the Settling Defendant and the Administrator. The Administrator will forward a copy of the "Regulation § 1.468B-1 Relation Back Election" to the Settling Defendant promptly after filing the same.

(c) Income Tax Returns. The Administrator will timely and properly prepare and file on behalf of the QSF: (i) federal tax, information and withholding returns in accordance with *Treas. Reg.* § 1.468B-2 and the other provisions of the Internal Revenue Code of 1986, as amended; and (ii) all necessary state and local tax returns.

16. **No Guarantee of Tax Consequences.** Notwithstanding any other provision of this Master Escrow Agreement, the parties hereto acknowledge and agree that no Settling Defendant has made any representations or warranties regarding the tax consequences of any Deposit under the Governing Documents and shall have no liability to the Claimants, the Administrator, the Custodian, or any other party with respect to matters related to such tax consequences. Further, the Governing Documents shall be binding on the parties hereto, and shall continue to apply, notwithstanding the tax consequences under the Governing Documents.

17. **Limitation of Each Settling Defendant's Liability.** No Settling Defendant or its counsel or insurers, if any, shall have any obligation or incur any liability whatsoever with respect to the distribution and administration of the QSF or any Sub-Account therein. Following the contribution of the settlement proceeds to the QSF in accordance with the MSA and this Master Escrow Agreement, each Settling Defendant and its counsel and insurers, if any, shall have no further obligation to contribute to the QSF and no further obligation to Claimants.

18. **Payments to Davis & Crump and Associated Counsel.** The Administrator shall be authorized to direct the Custodian to distribute all attorney fees and litigation expenses to Davis & Crump, following Paragraph 13 above, with any periodic payments made as part of attorney fee payments done for the convenience of the Claimants, consistent with existing contingency fee contracts, a court order, or to the extent required by law.

19. **Reliance.** The Administrator shall have the right to rely upon any affidavit, certificate, letter, notice, electronic mail or other document believed by the Administrator to be genuine and sufficient, and upon any other evidence believed by the Administrator, in its reasonable judgment, to be genuine and sufficient.

20. **Compensation and Reimbursement of Expenses.** The Administrator shall receive compensation in accordance with the terms of the Administrator's engagement with Davis & Crump, provided, however, that the fees and expenses reasonably incurred by the Administrator in performing its obligations or enforcing its rights hereunder, including reasonable attorney's fees, shall be paid by the Custodian from the income earned on the Deposit (payable as requested in writing by the Administrator). Where such income is insufficient, the Administrator's fees and expenses described above and as provided in the engagement letter may be charged against the Deposit (principal). All payments of fees and expenses shall be made only out of the Sub-Account to which such fees and expenses relate. Fees and expenses that relate to the QSF as a whole shall be paid proportionally by each Sub-Account.

21. **Termination.** Upon final distribution to the Claimants of all Deposits in all Sub-Accounts that have been or will be allocated to the Claimants, and as long as the parties do not expect further Sub-Accounts to be created or further Deposits to be received, the Administrator shall take appropriate steps to wind down the QSF and thereafter be discharged from any further responsibility with respect to the QSF. Upon completion of such disbursement of all of the Deposits and such winding down as specified herein, this Master Escrow Agreement shall terminate.

22. **Notices.** Any notice instrument or other communication required or permitted to be given by one of the parties to the other under this Master Escrow Agreement shall be considered as properly given if in writing and: (i) hand-delivered with written confirmation of receipt; (ii) sent by registered or certified mail, return receipt requested, and postage prepaid; (iii) sent by overnight courier, expenses prepaid; or (iv) sent by telex, telecopy, email, facsimile or prepaid telegram, in each case to the party at the address set forth below:

If to the Administrator:

Sylvius von Saucken, Fiduciary
K. Paige Bainum, Treasury Manager
The Garretson Resolution Group, Inc.
6281 Tri-Ridge Blvd., Suite 300
Cincinnati, OH 45140
Fax: (513) 601-8196
Email: svs@garretsongroup.com
pbainum@garretsongroup.com

If to Davis & Crump and / or Claimants:

Martin Crump, Esq.
Mark Davis, Esq.
Davis & Crump P.C.
1712 Fifteenth St., Suite 300
Gulfport, MS 39501
Fax: _____
Email: _____

All notices given in accordance herewith shall be deemed to have been received by the parties to whom such notices are directed: (i) upon delivery, if delivered personally or sent by telex, telecopy, facsimile, telegraph, or electronic mail; or (ii) three days after the date of transmittal thereof, if sent by registered or certified mail; or (iii) one business day after being deposited with the overnight courier. Any party to this Master Escrow Agreement may change the address to which such communications are to be directed by giving written notice to the other parties.

23. **Third Party Beneficiaries.** Each Settling Defendant for whom a Sub-Account is created within this QSF is an intended third party beneficiary to this Master Escrow Agreement. This Master Escrow Agreement is for the exclusive benefit of the parties hereto and the Settling Defendants and their respective permitted successors hereunder, and shall not be deemed to give, either express or implied, any legal or equitable right, remedy, or claim to any other entity or person whatsoever.

24. **Choice of Laws.** This Master Escrow Agreement shall be governed by the laws of the State of Ohio, without giving effect to principles of conflict of laws.

25. **Severability.** If any provision of this Master Escrow Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Master Escrow Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

26. **Headings.** The headings used herein are for reference only and shall not affect the construction of this Master Escrow Agreement.

27. **Agreement May Be Executed in Counterparts.** This Master Escrow Agreement and each 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.

28. **General.** This Master Escrow Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, devisees, executors, administrators, personal representatives, permitted successors, trustees, receivers, and permitted assigns. Neither the existence of this Master Escrow Agreement nor the disbursement of the Deposit or any portion thereof shall be construed or interpreted as a limitation or waiver of any rights, remedies, or claims any of the parties hereto may have under any agreement, at law, in equity, or otherwise.

29. **Entire Agreement.** This Master Escrow Agreement, together with each Sub-Account and MSA, constitutes the entire agreement between the parties with respect to the subject matter of this Master Escrow Agreement, and there are no other written or oral agreements, understandings or arrangements except as set forth herein. The terms of this Master Escrow Agreement may only be modified or waived in a writing signed by all parties hereto.

[Remainder of page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, the Administrator and Davis & Crump have executed this Master Escrow Agreement as of the dates set forth below:

Mark W. Davis, as authorized agent of
Davis & Crump, P.C.

Signature

Date

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

Signature

Date

EXHIBIT 1

COLOPLAST SUB-ACCOUNT ADDENDUM

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

WHEREAS, Davis & Crump and the Administrator have previously entered into a Master Escrow Agreement dated __, 2016 for the purpose of establishing 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 the MSA, (b) approval of the creation of the Sub-Account by the court, and (c) the execution of a Sub-Account Addendum;

WHEREAS, Davis & Crump has entered into a Master Settlement Agreement (“*MSA*”) with Coloplast Corp., Coloplast Manufacturing US, LLC Coloplast A/S, and Mpathy Medical Devices, Inc., and their related and affiliated companies (“*Coloplast*”) on behalf of certain Claimants to resolve certain tort claims arising out of injuries related to the Coloplast pelvic implants in exchange for the payment by Coloplast 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 Coloplast, to be retained therein and distributed therefrom in accordance with the terms of the MSA;

WHEREAS, in the QSF Order, the Court approved the creation of the Coloplast Sub-Account within the QSF; and

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

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements contained herein, the Administrator and Davis & Crump 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 Coloplast Order.

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

3. **Deposit.** Coloplast shall deposit the Settlement Proceeds into the QSF 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. **Termination of Sub-Account.** Upon final distribution to the Claimants of the Coloplast Sub-Account Deposit, and as long as the parties do not expect further Deposits to be received in the Coloplast Sub-Account, the Administrator shall take appropriate steps to wind down the Coloplast Sub-Account and thereafter be discharged from any further responsibility with respect to the Coloplast Sub-Account. Upon completion of such disbursement of all of the Deposit and such winding down as specified herein, this Coloplast Sub-Account Addendum shall terminate.

5. **Agreement May Be Executed in Counterparts.** This Coloplast 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 Davis & Crump have executed this Coloplast Sub-Account Addendum as of the dates set forth below:

Mark W. Davis, as authorized agent of
Davis & Crump, P.C.

Signature

Date

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

Signature

Date