

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

IN RE: NEOMEDIC
PELVIC REPAIR SYSTEM
PRODUCTS LIABILITY LITIGATION

MDL No. 2511

**PRETRIAL ORDER # 24
(Order Re: Qualified Settlement Fund – MDL 2511 Co-Lead Counsel)**

Pending is an Unopposed Motion for Approval of Qualified Settlement Fund, filed January 25, 2016. [ECF No. 86]. In the Motion, the Potts Law Firm, the Burnett Law Firm, and Fleming, Nolen & Jez, L.L.P., by and through Derek Potts, Esq., Riley Burnett, Esq., and Karen Beyea-Schroeder, Esq. (individually and collectively “MDL 2511 Co-Lead Counsel”), as co-lead counsel in MDL No. 2511, have moved the Court for entry of an Order to aid in the efficient processing and administration of a settlement program (the “Settlement Program”) offered by Neomedic International, S.L.¹, Desarrollo e Investigación Médica Aragonesa, S.L. (“DIMA”)², Specialties Remeex International, S.L.³, and Neomedic, Inc.⁴ (these companies shall be collectively referred to herein as “Neomedic”). In particular, the Motion seeks an Order (1) approving the trust agreement (“Trust Agreement”), attached hereto as Exhibit A, which forms a settlement trust

¹ Neomedic International, S.L. is a corporation organized and existing under the laws of the Kingdom of Spain maintaining its principal place of business at C/Maestrat, 41-43 Terrassa, Barcelona, Spain 08225.

² DIMA is a corporation organized and existing under the laws of the Kingdom of Spain maintaining its principal place of business at Poligono Industrial Mediavega Parcela 2.9, Calatayud, Zaragoza, Kingdom of Spain 50300.

³ Specialties Remeex International, S.L. (“SRI”) is a corporation organized and existing under the laws of the Kingdom of Spain maintaining its principal place of business at C/Tren De Baix, 55 Baixos Terrassa, Barcelona, Kingdom of Spain 08223. SRI is registered with the FDA as the owner/operator of Neomedic International.

⁴ Neomedic Inc. was a corporation organized and existing under the laws of Florida, with its principal place of business at 2655 Le Jeune Road, #810, Coral Gables, Florida, 33134. Defendant Neomedic Inc. was the United States headquarters of Neomedic International, S.L.

account named the Neomedic TVM Settlement Program Trust (“Settlement Trust”) pursuant to the terms of the Settlement Program and the Trust Agreement established under the Settlement Program, (2) retaining continuing jurisdiction and supervision over the Settlement Trust, and (3) determining that the Settlement Trust 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”).

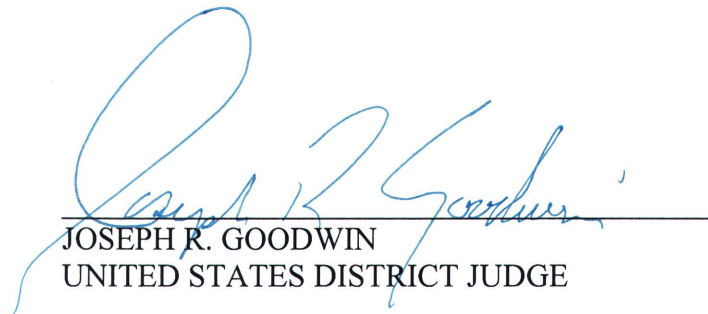
The court, having reviewed the Motion and the Trust Agreement, and finding good and sufficient cause therefor, hereby **FINDS** and **ORDERS** as follows:

- 1) The Motion is **GRANTED**;
- 2) The terms of the Trust Agreement are hereby approved; and
- 3) 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.* The Court further retains continuing jurisdiction and supervision over the Settlement Trust, in accordance with the terms of the Trust Agreement.

The court **DIRECTS** the Clerk to file a copy of this order in 2:14-md-2511 and it shall apply to each member related case previously transferred to, removed to, or filed in this district, which includes counsel in all member cases up to and including civil action number 2:15-cv-14933. 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: January 27, 2016



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

EXHIBIT A

THE NEOMEDIC TVM SETTLEMENT PROGRAM TRUST

January _____, 2016

THE NEOMEDIC TVM SETTLEMENT PROGRAM TRUST

ARTICLE I ESTABLISHMENT OF THE SETTLEMENT TRUST

1-1 **Creation and Name.** Neomedic International, S.L., Desarrollo e Investigación Médica Aragones, S.L. (DIMA), Specialties Remeex International, S.L. and Neomedic, Inc. (these companies shall be collectively referred to herein as “Neomedic”); together with the Potts Law Firm, the Burnett Law Firm, and Fleming, Nolen & Jez, L.L.P., by and through Derek Potts, Esq., Riley Burnett, Esq., and Karen Beyea-Schroeder, Esq., as Co-Lead Counsel for *In re Neomedic Pelvic Repair System Products Liability Litigation*, MDL No. 2511 (“MDL 2511 Co-Lead Counsel”); and Scott Freeman, as Trustee, hereby enter into this trust agreement (the “Trust Agreement”) establishing a trust under Texas 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 “Neomedic TVM Settlement Trust” or the “Settlement Trust”), with the funds to be held at Amegy Bank (the “Custodian”).

1-2 **Purpose.** The purpose of the Settlement Trust is to accept, hold and distribute funds in accordance with the Memorandum of Understanding regarding the Neomedic TVM Settlement Program, dated as of November 16, 2015 (the “MOU”), in which Neomedic agrees to offer a settlement for all known claimants who have had implanted one or more Neomedic Pelvic Repair System Product(s) (“Implant Claimant”) or are asserting a claim on behalf of such Implant Claimant who is not legally capable of asserting her own claim (collectively, “Claimants”), as well as any and all consortium and derivative claimants. In furtherance of this purpose, the Settlement Trust shall be administered and operated pursuant to this Trust Agreement and the MOU.

1-3 **Trust Estate.** All assets transferred to the Settlement Trust by or on behalf of Neomedic pursuant to the MOU and 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 MOU.

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, the (1) the United States District Court, Southern District of West Virginia, MDL 2511 (the “Court”) shall approve the establishment of the Settlement Trust under the terms and conditions of this Trust Agreement and the MOU 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 Neomedic Pelvic Repair System Products; and (4) the Settlement Trust is a trust under Texas state law, and its assets are, and will be, segregated from the general assets of Neomedic and its insurer Columbia Casualty Company and deposited herein. Consistent with the terms of the MOU 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 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 (the “Trustee”) shall be as defined in the MOU and this Trust Agreement.

ARTICLE II

PAYMENTS TO THE SETTLEMENT TRUST

2-1 Payment. Neomedic shall transfer, or cause to be transferred, to the Settlement Trust the settlement consideration specified in the MOU, and at such times as are specified in the MOU. The Trustee will obtain a tax identification number on behalf of the Trust, execute a W-9, and provide Neomedic with wiring instructions for the custodial bank which will hold the assets of the Trust.

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

2-3 Nature of Contributions. All contributions by or on behalf of Neomedic to the Settlement Trust shall be made in immediately available funds. Contributions made to the Settlement Trust shall not be construed as fines, penalties, monetary sanctions, or punitive damages.

2-4 Acceptance of Assets. To further the purposes of this Settlement Trust and the MOU, the Trustee agrees to accept the contributions that Neomedic 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 MOU.

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 MOU.

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 MOU, and the Approval Order from the Settlement Court approving the Settlement Trust. 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 MOU, 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 MOU, 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 MOU, 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 MOU and this Trust Agreement.
- b) Investments and Preservation of Principal. The Trustee shall invest and reinvest the Trust Estate in accordance with the MOU 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 MOU.
- d) Payment of Administrative Expenses and Costs. In accordance with Section 3-1, the Trustee may pay reasonable and necessary fees and expenses imposed upon or incurred in connection with the administration of the Settlement Trust in the discharge of its obligations under this Trust Agreement, including, without limitation, any taxes due and owing in respect of the Settlement Trust as set forth in Section 7-2, and the fees and costs associated with investment advisors, accountants, agents, managers, attorneys, actuaries, auditors, or insurers, which are incurred to maintain and administer the Settlement Trust pursuant to Section 4-2e).
- 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 MOU 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 MOU, 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 MOU.
- j) Administration of Settlement Program. The Trustee shall administer the Neomedic TVM Settlement Program in conformity with the MOU, including obtaining, organizing, and transmitting Registration Forms and Registration Documentation, as defined in the MOU; analyzing Releases submitted to the Trustee, and communicating, with Neomedic, the Special Master, and MDL 2511 Co-Lead Counsel regarding the validity of such Releases; and reviewing and analyzing Registration Documentation to allocate and calculate the Settlement Amount, as defined in the MOU, among Claimants.

4-3 Limitation on Powers of the Trustee. The Trustee shall not take any actions inconsistent with this Trust Agreement or the MOU, 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 agreed to by Neomedic and the Trustee and in consultation with MDL 2511 Co-Lead Counsel, 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 commercial banks 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 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 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 Custodian or an Affiliate of the Custodian serves as investment manager, administrator, shareholder, and/or servicing agent. 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. No later than the fifth business day of each month, the Trustee shall provide by electronic mail to Neomedic, MDL 2511 Co-Lead Counsel, and the Special Master copies of bank and financial statements for the Settlement Trust sufficient to show the end of month balance 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. No later than the tenth business day following the end of each calendar year, the Trustee shall provide by electronic mail to Neomedic, MDL 2511 Co-Lead Counsel, and the Special Master 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 electronic mail to Neomedic, MDL 2511 Co-Lead Counsel, and the Special Master, 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.

5-3 Additional Reporting to the Court. The Trustee shall report to the Court in writing with respect to any matter arising from the administration of the Settlement Trust that the Trustee deems advisable to bring to the attention of the Court or upon request of the Court. The Trustee shall create and maintain records of the Trustee's activities arising from this Trust Agreement and any orders of the Court. The records shall be created and maintained in a manner that is ordinary and customary for the obligations imposed by the MOU, any Court order, and this Trust Agreement. Copies of the records shall be provided to the Court upon its request, subject to any privileges or other protections. Any privileged or otherwise protected or confidential material shall be provided under seal to the Court.

ARTICLE VI

TRUSTEE

6-1 Trustee Independence. The Trustee is, and shall be, independent of Neomedic and MDL 2511 Co-Lead Counsel.

6-2 Initial Trustee. The initial Trustee of this Settlement Trust as approved by the Court in the Approval Order is Scott Freeman (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 Neomedic, MDL 2511 Co-Lead Counsel, and the Court, and the Trustee's service terminates immediately upon death. The Trustee may be removed by joint motion made by Neomedic and MDL 2511 Co-Lead Counsel, and approved by the Court.

6-4 Appointment of Successor Trustee. Neomedic and MDL 2511 Co-Lead Counsel shall have the power to jointly nominate a successor Trustee, for approval by the Court. If a successor Trustee is not jointly nominated within sixty 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 nominees of Neomedic and MDL 2511 Co-Lead 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 shall be compensated for services performed as set forth in the MOU and this Trust Agreement, and any fees, costs, and expenses incurred, provided that under no circumstances shall the Trustee be entitled to payment of fees, costs, and expenses in excess of the maximum amount(s) provided in the MOU. Payments to the Trustee shall be made from the Trust Estate and disbursed pursuant to Section 3-1. The Trustee shall be promptly reimbursed such fees, costs, and expenses, 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 MOU, so long as the Trustee complies with the terms of the MOU 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.

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 MOU 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, in accordance with Section ; 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 Neomedic have any liability or responsibility for any amounts payable by the Settlement Trust or Trustee pursuant to this Section 7-2, and Neomedic shall be indemnified and held harmless for such amounts by the Settlement Trust.

7-3 Savings Provision. 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 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 Neomedic resulting solely from the income earned by the Settlement Trust

and for no other reason, Neomedic 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 Neomedic's written request to the Trustee, subject to agreement of MDL 2511 Co-Lead Counsel, which shall not be unreasonably withheld.

ARTICLE VIII

TERMINATION AND WINDING UP

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 MOU (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 MOU), and (b) the Court has approved termination of the Settlement Trust, pursuant to petition of Neomedic, MDL 2511 Co-Lead Counsel, or the Trustee. Should Neomedic, MDL 2511 Co-Lead 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 MOU, 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 MOU. Subject to the MOU, the Trustee shall finalize distributions from the Trust Estate in accordance with Section 3-1. The Trustee is authorized, upon such final distribution of the Trust Estate, to take appropriate steps to conclude the Settlement Trust and thereafter the Trustee is discharged from any further responsibility with respect to the Settlement Trust.

ARTICLE IX

GENERAL PROVISIONS

9-1 Governing Law. This Trust Agreement creates a trust under the laws of the State of Texas, 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 Texas 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 MOU and, in the event of any conflict between the terms of this Trust Agreement and the terms of the MOU, the terms of the MOU shall control.

9-3 No Admission of Liability. It is agreed that neither the act of entering into this Trust Agreement or the MOU nor any contribution to the Settlement Trust nor any action taken

under this Trust Agreement or the MOU shall be deemed to constitute an admission of any wrongdoing, liability, or fault on the part of the Trustee or Neomedic, nor shall it be construed as any acknowledgment by Neomedic that any Claimant has or may bring any claim or cause of action against Neomedic in any court of law or other forum, nor does it constitute a commitment or agreement, either express or implied, by any or all of them to undertake any further activities outside the scope of this Trust Agreement or the MOU. No action taken under this Trust Agreement or the MOU shall be admissible in evidence before any court or other tribunal to establish or refute liability in relation to any claim relating to any Neomedic Pelvic Repairs System Product. Nor shall action taken under this Trust Agreement or the MOU constitute or be used as precedent in any future matter involving Neomedic.

9-4 Counterparts. This Trust Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

9-5 Severability. Should any provision of this Trust Agreement be determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any and all other provisions of this Trust Agreement.

9-6 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.

9-7 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 Neomedic, MDL 2511 Co-Lead Counsel and the Trustee, and approved by order of the Court.

9-8 Entire Agreement; No Waiver. This Trust Agreement and the MOU together contain the entire agreement of the Parties relating to the subject matter of this Trust Agreement, and other than the MOU, 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 MOU and, in the event of any conflict between the terms of this Trust Agreement and the terms of the MOU, the terms of the MOU 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 twelve (12) page Trust Agreement has been executed by Neomedic as Settlor, MDL 2511 Co-Lead Counsel, and the Trustee all as of the date indicated on the cover page above.

SO AGREED ON BEHALF OF NEOMEDIC, AS SETTLOR:

By: _____
Ernest F. Koschineg, III
Cipriani & Werner, P.C.
450 Sentry Parkway East
Suite 200
Blue Bell, PA 19422
610.567.0700 (phone)
610.567.0712 (facsimile)
ekoschineg@c-wlaw.com

SO AGREED ON BEHALF OF MDL 2511 CO-LEAD COUNSEL:

By: _____
Derek H. Potts, Esq.
The Potts Law Firm, LLP
100 Waugh Drive, Suite 350
Houston, TX
713.963.8881 (phone)
713.583.5388 (facsimile)
dpotts@potts-law.com

By: _____
Riley L. Burnett, Jr., Esq.
Burnett Law Firm
55 Waugh Drive, Suite 803
Houston, TX 77007
832.413.4410 (phone)
832.900.2120 (facsimile)
rburnett@burnettlaw.com

By: _____
Karen Beyea-Schroeder, Esq.
Fleming, Nolen & Jez, LLP
2800 Post Oak Boulevard, Suite 4000
Houston, TX 77056
713.621.7944 (phone)
713.621.9638 (facsimile)
Karen_Beyea-Schroeder@flaming-law.com

SO AGREED ON BEHALF OF SCOTT FREEMAN, AS TRUSTEE

By:

Scott Freeman
Trustee
5847 San Felipe, Suite 4550
Houston, Texas 77057
888.284.0332 (phone)
713.513.5572 (facsimile)
scott@settlement-alliance.com

ACCEPTANCE OF TRUST ESTATE

Scott Freeman, named as the Trustee of the Neomedic TVM Settlement Trust accepts this appointment and the assets to be transferred to the Neomedic TVM Settlement Trust to be held, administered and distributed as provided in this Trust Agreement.

WITNESS the execution hereof of the Trustee on this _____ day of January, 2016.

By: _____
Scott Freeman