

Ontario Superior Court of Justice

BETWEEN

JOSEPH CHARLES CRISANTE, KATHERINE CRISANTE,
LYNNE SLOTEK and LARRY SLOTEK,
Plaintiffs

-and-

DEPUY ORTHOPAEDICS, INC., DEPUY INTERNATIONAL LIMITED,
DEPUY, INC. and JOHNSON & JOHNSON INC.,
Defendants.

Proceeding under the Class Proceedings Act, 1992, S.O. 1992, c.6

SETTLEMENT AGREEMENT

Made as of 19 February 2021

ASR CLASS SETTLEMENT

RECITALS

- A. WHEREAS the Plaintiffs commenced Civil Action No. 10-415755-00CP in Superior Court of Justice, Province of Ontario, alleging that the Defendants designed, manufactured, marketed, and sold a defective hip implant known as the ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System and seeking to represent a class of persons similarly situated (“Ontario Proceeding”);
- B. WHEREAS, an ASR Implant Class and related Family Class were certified in the Ontario Proceeding by an Order issued August 27, 2013 by the Honourable Justice Belobaba of the Ontario Superior Court of Justice;
- C. WHEREAS the Defendants deny liability in respect of the claims alleged in the Ontario Proceeding, and believe that they have good and reasonable defenses in respect of the merits in the Ontario Proceeding;
- D. WHEREAS the Defendants assert that they would actively pursue these defenses in respect of the merits at trial if the Plaintiffs continued to litigate the Ontario Proceeding against them;
- E. WHEREAS the Parties have negotiated and entered into this Settlement Agreement to avoid the further expense, inconvenience, and burden of this litigation, and to achieve final resolution of all claims asserted or that could have been asserted against the Defendants by the Plaintiffs on their own behalf and on behalf of the members of the ASR Class (as defined herein) in the Ontario Proceeding;
- F. WHEREAS counsel for the Defendants and counsel for the Plaintiffs have engaged in extensive arm’s-length settlement discussions and negotiations in respect of this Settlement Agreement;
- G. WHEREAS as a result of these settlement discussions and negotiations, the Defendants and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the Settlement between the Defendants and the Plaintiffs, subject to the approval of the Ontario Court;
- H. WHEREAS the Plaintiffs have agreed to accept this Settlement, in part, because of the Settlement Amount to be paid under this Settlement Agreement if the Effective Date is reached, as well as the attendant risks of litigation in light of the potential defenses that may be asserted by the Defendants;
- I. WHEREAS the Defendants do not admit through execution of this Settlement Agreement any of the conduct alleged in the Ontario Proceeding or any other proceedings or any liability to Plaintiffs or to anyone;

- J. WHEREAS the Plaintiffs, Class Counsel, and Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Defendants or evidence of the truth of the Plaintiffs' or anyone else's allegations against the Defendants;
- K. WHEREAS the Plaintiffs and their counsel have reviewed and fully understand the terms of this Settlement Agreement; and based on their analyses of the facts and law applicable to the Plaintiffs, and having regard to the burdens and expense in prosecuting the Ontario Proceeding, including the risks and uncertainties associated with trials and appeals, the Plaintiffs and their counsel have concluded that this Settlement Agreement is fair, reasonable, and in the best interests of the Plaintiffs and the ASR Class that they represent;
- L. WHEREAS the Parties therefore wish to, and hereby do, finally resolve, without admission of liability, the Ontario Proceeding against the Defendants; and
- M. WHEREAS for the purposes of settlement only and contingent on orders by the Courts as provided for in this Settlement Agreement, the Plaintiffs and Class Counsel have consented to (i) the vacating of the February 2021 trial date in this matter and the placement of the trial management schedule on standstill to permit the settlement approval proceedings to occur, and (ii) if the settlement is approved and reaches the Effective Date (as defined herein), settlement of the Ontario Proceeding against the Released Persons, as that term is defined in Section 1 below, and the release of all Released Persons, as that term is defined in Section 1, for any and all Released Claims, as that term is defined in Section 1 below, that have been or could have been asserted by the Class and/or Health Insurers, as those terms are defined in Section 1 below.

NOW THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed by the Parties that the Ontario Proceeding be settled on the merits with prejudice to the Releasing Persons, on the following terms and conditions:

SECTION 1 – DEFINITIONS

For the purpose of this Settlement Agreement only, including the Recitals and Schedules hereto:

- (1) Account means an interest-bearing trust account under the control of the Class Counsel at a Schedule 1 Canadian chartered bank in Toronto, Province of Ontario.
- (2) Allegations means any and all assertions of fact or law, causes of action, claims, injuries, and damages, which were pled or which could have been pled, in the Statement of Claim filed in Action No. CV-10-415755-00CP in the Superior Court of Justice, Ontario.
- (3) Appeal Adjudicator means the independent person selected by the Class Counsel and approved by the Court to make final and non-appealable decisions with respect to the adjudication of any claim decisions of the Class Counsel that are subject to appeal.

- (4) Approval Hearings means the hearings on the motions before the Ontario Court for the approval of the Settlement Agreement and notice approvals.
- (5) Approval Order(s) means the order(s) made by the Court in this Proceeding, approving this Settlement Agreement and the notices required with respect to the settlement and the notice dissemination plans, substantially in the forms attached as Schedules A-F, hereto.
- (6) Approved Claimant means a member of the ASR Class defined below, who is an Eligible Claimant and who has submitted the required documentation and whose claim has been approved for payment by Class Counsel, the Claims Administrator if one is appointed, or the Appeal Adjudicator, if applicable.
- (7) ASR Class means collectively:
- (a) all persons resident in Canada other than British Columbia and Québec who have been implanted with DePuy ASR XL Acetabular Hip System and/or the DePuy ASR Hip Resurfacing System (the “ASR Implants”) which were variously designed, developed, tested, manufactured, licensed, assembled, labeled, marketed, distributed and/or sold by one or more Defendants (individually the “ASR Implant Class”); and
 - (b) all persons residents in Canada who by virtue of a personal relationship to one or more members of the ASR Implant Class have standing pursuant to section 61(1) of the *Family Law Act*, R.S.O. 1990, c. F.3 as amended (or the similar legislation in the other provinces and territories) (individually the “Family Class”).
- (8) ASR Implant System means the ASR™ XL Acetabular Hip System (“ASR XL”) or the ASR™ Hip Resurfacing System (“ASR Resurfacing”), and any and all Component and Ancillary Parts (also collectively referred to as “Qualified Device”).
- (9) ASR Index Surgery means the first surgical implantation of the ASR™ XL Acetabular Hip System or the ASR™ Hip Resurfacing System in a surgery on that hip.
- (10) ASR Revision Surgery means, subject to paragraph 29, a surgery subsequent to the ASR Index Surgery to remove the cup of an ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System that was medically necessary and in which all of the following criteria are met:
- (i) the revision surgery must have taken place prior to the Last Eligible Date;
 - (ii) the revision surgery must have occurred more than 180 days following the ASR Index Surgery, but less than ten (10) years following the ASR Index Surgery;
 - (iii) the revision surgery is not an “Excluded Trauma-Related Revision”; and

(iv) the revision surgery is not an “Excluded ASR Resurfacing and Hemiarthroplasty Revision.”

(11) Bilateral Revision means a bilateral ASR Revision Surgery performed on both hips of a member of the ASR Implant Class that was performed in either one or two surgical procedures.

(12) Claim Form means the form and declaration established by Class Counsel for Class Members and approved by the Court to make a claim under this settlement.

(13) Claims Administrator, if one is appointed, means the entity selected by Class Counsel and approved by the Court to assist in administering this settlement, including but not limited to disseminating the Notices, administering the settlement by receiving, reviewing and evaluating claims, rendering settlement awards or denying claims, facilitating any appeal process and processing the payment of Claim Amounts.

(14) Claim Amount means the total amount to which an Approved Claimant is entitled based on an award schedule and objective criteria to be determined solely by Class Counsel and approved by the Court, taking into account: (a) Class Members who: (i) underwent single ASR Revision Surgery, (ii) underwent bilateral ASR Revision Surgery, (iii) incurred certain medical complications due to an ASR Revision Surgery, and (iv) incurred extraordinary income loss; and (b) the length of time that has passed since the Class Member’s ASR Index Surgery.

(15) Claims Period means the period commencing with the first publication of the Notice of the Court’s Approval of the Settlement and continuing until 180 days after the Effective Date.

(16) Class Counsel means Colin P. Stevenson and Harvin D. Pitch of Stevenson Whelton LLP, Won J. Kim of Kim Spencer McPhee Barristers P.C., and Joel Rochon of Rochon Genova LLP, which are Class Counsel for the ASR Class.

(17) Class Counsel Fees means all Fees approved by the Court as payable pursuant to Section 9 hereof.

(18) Class or Class Members means all members of the ASR Class who did not validly and timely opt out of the ASR Class.

(19) Class Member means a member of the ASR Class who did not validly and timely opt out of the ASR Class.

(20) Component and Ancillary Parts means each and every component or ancillary part implanted contemporaneously with and/or intended to function as part of the prosthetic construct that includes any ASR cup or ASR XL cup, including but not limited to the femoral stem.

(21) Contemporaneous Medical/Hospital Records means medical/hospital records created contemporaneous with the diagnosis of a condition or complication and/or the occurrence of a surgery or other treatment for which a claim is being made.

(22) Costs of the Notice Program means all third-party costs associated with the publication of the Notice of Approval Hearing and the Notice of Settlement Approval.

- (23) Court or Ontario Court means the Superior Court of Justice, Province of Ontario, handling the Ontario Proceeding.
- (24) Defendants means Johnson & Johnson Inc., a legal entity operating in Canada, and DePuy Orthopaedics Inc., DePuy International Limited, and DePuy, Inc.
- (25) Defendants' Counsel means Blake Cassels & Graydon LLP and Faegre Drinker Biddle & Reath LLP.
- (26) Disbursements means expenses incurred by Class Counsel in relation to prosecuting the Ontario Proceeding.
- (27) Effective Date means the latest date on which any of the Final Orders in the Ontario Proceeding take effect without the possibility of further appeal, provided all required consents to this settlement from Health Insurers have been obtained and all lawsuits required to be dismissed in accordance with section 7.3(b) have been dismissed without the possibility of appeal.
- (28) Eligible Claims means claims meeting the eligibility criteria set out in Section 4.
- (29) Eligible Claimant means a member of the ASR Implant Class who (a) underwent an ASR Index Surgery, (b) either has undergone an ASR Revision Surgery by the Last Eligible Date or has been unable to undergo an ASR Revision Surgery for medical reasons, and (c) has not timely and validly opted out of the ASR Implant Class previously. If the cup is revised in a Resurfacing Claimant, that Claimant may qualify as an Eligible Claimant for a settlement award in connection with said ASR Revision Surgery, but is also subject to all of the other terms and exclusions in this Settlement Agreement. Eligible Claimants include the duly appointed estate or personal representatives of Eligible Claimants who had ASR Revision Surgery, but who are now deceased or otherwise incompetent to act on their own behalf. For clarity, Class Members who had an ASR Index Surgery, but remain Unrevised for other than medical reasons (as defined below) are not considered by Defendants to be Eligible Claimants. Further, any Class Members who were part of another ASR class in Canada, make or have made claims against other ASR class action settlements in Canada or elsewhere, or have otherwise previously released their claim in an individual settlement, are not Eligible Claimants and will be ineligible to obtain a recovery from this settlement of the Ontario Proceeding. Notwithstanding the foregoing, Plaintiffs and Class Counsel, in their sole and absolute discretion, may irrevocably waive one or more of the injury criteria referenced above and/or in section 1, subparagraphs 10, 30, 31, 37, and 53 and section 4.4 and deem a Class Member to be an Eligible Claimant. However, notwithstanding the foregoing, Class Counsel may not waive the requirements that: (i) an Approved Claimant be a member of the ASR Implant Class or (ii) that any Class Members who were part of another ASR class in Canada, and who make or have made successful claims (*i.e.*, receives any compensation) against other ASR class action settlements in Canada or elsewhere, or have otherwise previously released their claim in an individual settlement, are not Eligible Claimants and will be ineligible to obtain a recovery from this settlement of the Ontario Proceeding.
- (30) Excluded ASR Resurfacing and Hemiarthroplasty Revision means a surgery on the femoral side without revision of the cup of the ASR XL or ASR Resurfacing and thus does not constitute

an ASR Revision Surgery and does not entitle a Claimant to a settlement award in relation to that hip, subject to paragraph 29.

(31) Excluded Trauma-Related Revision Surgery means, subject to paragraph 29, a revision that is not an ASR Revision Surgery because the revision was caused by “Trauma,” which is defined as a change in the alignment or fixation of the Qualified Device caused by the application of an external force in a sudden or unexpected manner. Trauma affecting a Qualified Device will be deemed to have occurred if:

(1) a change in the position of any Component and Ancillary Parts of the Qualified Device, or in its alignment or fixation, is verified by radiological studies, or

(2) such change is described in contemporaneous medical records by the treating physician who attributes the immediate medical cause for revision to be due to that traumatic event.

If Trauma is identified in the contemporaneous medical records as the immediate cause for revision, subject to paragraph 29, then the revision is not an ASR Revision Surgery for purposes of this Agreement and the claimant shall be deemed unable to qualify for benefits under this settlement, unless preoperative medical records show, more likely than not, the claimant would have required revision in the near term regardless of the Trauma. The claimant shall have a right to request a review of this determination by the Appeal Adjudicator, who shall then review the relevant contemporaneous medical records submitted by the claimant to determine whether the trauma was the sole cause for the revision. The final decision shall be made by the Appeal Adjudicator in accordance with the standards in this paragraph and whose decision will be final and non-appealable.

(32) Execution Date means the first date that the Settlement Agreement has been signed by all of the Parties.

(33) Final Approval Date means the later of: (a) 31 days after the Court issues an Approval Order and there being no appeal, or (b) the disposition of any and all appeals from the Approval Order.

(34) Final Order(s) means the final orders entered by the Court in respect of the approval of this Settlement Agreement once the time to appeal such orders has expired without any appeal being taken or, if an appeal from a final order is taken, once there has been affirmation of the approval of this Settlement Agreement upon a final disposition of all appeals.

(35) Health Insurers means any provincial and territorial Ministries of Health or equivalents, Provincial and Territorial Governments and/or provincial and territorial plans, except for Ontario, B.C., and Québec, funding medical services to members of the ASR Implant Class with respect to any ASR Implants, including but not limited to ASR Revision Surgeries.

(36) Health Insurer Claims means the entitlement of any Health Insurers to pursue any subrogated or direct claims arising from the provision of health care services to Class Members

relating to or arising out of the Allegations pursuant to the legislation that permits the recovery of healthcare costs or medical expenses from third parties.

(37) Last Eligible Date means August 24, 2020, subject to paragraph 29.

(38) Notice and Administration Costs means all fees, costs and taxes and any other amounts incurred for the approval, implementation, and administration of the Settlement Agreement, including all fees, costs and taxes incurred to prepare the Notices and their publication and dissemination pursuant to the approved Notice Program, but excluding Class Counsel Fees and Disbursements.

(39) Notice of Approval Hearing means the form of notice to be agreed to by the Plaintiffs and the Defendants within ten (10) days of the Execution Date, as may be approved by the Ontario Court, that informs the Class of the date and location of an Approval Hearing, the principal elements of this Settlement Agreement, and of the process by which Class Members may object to the Settlement of this proceeding.

(40) Notice of Settlement Approval means the form of notice to be agreed to by the Plaintiffs and the Defendants within ten (10) days of the Execution Date, as may be approved by the Ontario Court, that informs the Class of the approval of this Settlement Agreement and of the process by which a member of the Class may make a claim under this settlement.

(41) Notices means (i) the Notice of Approval Hearing and (ii) the Notice of Settlement Approval.

(42) Ontario Settlement Program or Settlement Program means the claims process and settlement awards available for qualifying Eligible Claimants that are members of the ASR Implant Class, which shall be established exclusively by Plaintiffs and Class Counsel with Court approval, and administered under the supervision of Class Counsel under the terms of this Settlement Agreement, subject to Final Approval and the Effective Date. For clarity, Court approval of the specific Ontario Settlement Program is not a condition of this Settlement, but Court approval of the Settlement Agreement and reaching the Effective Date is a condition of the Settlement.

(43) Parties means the parties to this Settlement Agreement, including Plaintiffs, Class Counsel, and the Defendants.

(44) Physician Declaration means any declaration of an Eligible Claimant's treating physician required by Class Counsel, the Claims Administrator, or the Appeal Adjudicator to be submitted in connection with a claim of (i) an ASR Revision Surgery that was placed in the scheduling queue on or before the Last Eligible Date, (ii) an ASR Revision Surgery that has not occurred due to medical reasons, or (iii) a claim for a medical complication related to an ASR Revision Surgery. All other product and medical requirements are to be demonstrated to Class Counsel, the Claims Administrator, or the Appeal Adjudicator by Contemporaneous Medical/Hospital Records submitted as part of a claim under this settlement.

(45) Plaintiffs means the Representative Plaintiffs.

(46) Released Claims means:

- (a) as it relates to the Health Insurers, any Health Insurer Claims which a Health Insurer ever had, now have, or hereafter can, shall, or may have arising out of or in any way connected with injuries allegedly suffered by the ASR Class and relating directly, or indirectly to the Allegations; and
- (b) for all other Releasing Persons, any and all claims, including assigned claims, of the Releasing Persons whether known or unknown, asserted or unasserted, regardless of the legal theory, existing now or arising in the future, relating to or arising out of the design, development, manufacture, formulation, testing, distribution, marketing, labeling, regulatory submissions, advertising, prescription, purchase, sale, implantation, use, removal, or revision of the ASR Implant System and include, without limitation, all claims and Allegations for damages or remedies of whatever kind or character relating to or arising out of any ASR Implant, known or unknown, that are now recognized by law or that may be created or recognized in the future by statute, code, regulation, judicial decision, administrative adjudication, or in any other manner for:
 - (i) personal injury and/or bodily injury, damage, death, fear of disease or injury, mental or physical pain or suffering, emotional or mental harm, or loss of enjoyment of life;
 - (ii) loss of wages, income, earnings or earning capacity, medical expenses, doctor, hospital surgical, nursing and drug bills;
 - (iii) loss of support, services, consortium, companionship, society or affection, or damage to familial relations including without limitation, all claims by persons who by reason of his or her relationship to one of more of the ASR Implant Class have standing to sue pursuant to Section 61(1) of the *Family Law Act*, R.S.O. 1990 c. F.3 or the equivalent legislation in other provinces and territories;
 - (iv) wrongful death and survival actions;
 - (v) medical screening or monitoring, injunctive, declaratory or equitable relief;
 - (vi) consumer fraud, refunds, restitution, unfair business practices, deceptive trade practices, unjust enrichment, waiver of tort, lack of efficacy, money had and received and other similar claims;
 - (vii) compensatory damages, punitive or exemplary damages, statutory and other multiple damages or penalties of any kind;
 - (viii) economic or business losses, diminished value or lost benefit-of-the-bargain;
 - (ix) liquidation actions;
 - (x) lawyer fees, costs, court, litigation or other expenses; and/or
 - (xi) prejudgment or post-judgment interest.

(47) Released Persons means:

- (a) The Defendants DePuy Orthopaedics Inc., DePuy International Ltd., DePuy Inc., and Johnson & Johnson, Inc. and each of their respective past, present and future direct or indirect parent companies, subsidiaries, divisions, affiliates, joint ventures, joint venturers, inventors, designers, patent holders, manufacturers, distributors, retailers (including, without limitation, wholesale distributors, private label distributors, retail distributors, pharmacies and pharmacists), physicians, surgeons, hospitals, or other prescribers, clinical researchers, contractors and consultants, and each of their respective present and former officers, directors, employees, stockholders, partners, owners, insurers, attorneys, representatives and agents, and each of their predecessors, successors and assigns;
- (b) any and all manufacturers, suppliers (including suppliers of materials, machines or equipment used in the manufacture of the ASR Implant System), purchasers, licensors, licensees and sponsors of ASR Implant System or any raw materials used in the ASR Implant System distributed or marketed by any of the persons in subparagraph above; each of their parent companies, subsidiaries, divisions, affiliates, joint ventures, joint venturers, distributors, retailers (including, without limitation, wholesale distributors, private label distributors, retail distributors, pharmacies and pharmacists), clinical researchers, contractors and consultants; each of their present and former officers, directors, employees, stockholders, partners, owners, insurers, attorneys, representatives, and agents; and each of their predecessors, successors and assigns; and
- (c) any other person or entity involved in the development, design, manufacture, formulation, testing, distribution, marketing, labeling, regulatory submissions, advertising or sale of the ASR Implant System; each of their present and former officers, directors, employees, stockholders, partners, owners, insurers, attorneys, representatives and agents; and each of their predecessors, successors and assigns.

(48) Releasing Persons means: (i) all members of the ASR Implant Class who did not timely opt out of the ASR Implant Class, (ii) all members of the Family Class, (iii) the Health Insurers, and (iv) each of their respective successors, heirs, estates, administrators, trustees and assigns and their respective affiliated predecessor, successor, and related companies or entities (as applicable).

(49) Settlement Agreement or Settlement means this Agreement, including any Recitals hereto.

(50) Settlement Amount means the aggregate amount payable by the Defendants pursuant to Section 4.3.

(51) Single Revision means a single ASR Revision Surgery on one hip of a Class Member.

(52) Termination Right means the right of Defendants to terminate this Settlement Agreement at its option in the event one or more of the circumstances set forth in this Agreement occurs or fails to occur.

(53) Unrevised means any member of the ASR Implant Class who has not undergone surgery to replace the cup of a Qualified Device, subject to paragraph 29.

SECTION 2 – CALCULATION OF DEADLINES AND CONDITION PRECEDENT

(i) If any deadline identified in the Settlement Agreement falls on a weekend, an Ontario provincial holiday, or Canadian national holiday, the deadline shall occur on the following weekday that is not an Ontario provincial or Canadian national holiday.

(ii) Subject to Section 8 below, this Settlement Agreement shall be null and void and of no force or effect unless the Ontario Court approves this Settlement Agreement as drafted and executed, and the orders so made have become Final Orders and the Effective Date has occurred.

SECTION 3 – SETTLEMENT APPROVAL

3.1 Best Efforts

The Parties shall use their best efforts to effect this Settlement and to secure (i) the continuance of the trial management schedule, including the vacating of the February trial date, in this matter *sine die* to permit the settlement approval proceedings to occur, and (ii) the prompt, complete and final settlement of the Proceedings with prejudice as against the Defendants and the Release in favour of the Released Persons.

3.2 Motion Approving Notices

At times mutually agreed to by the Parties and the Ontario Court after the Settlement Agreement is executed and Health Insurer consents obtained, the Plaintiffs shall bring a motion before the Ontario Court for an order approving: (i) the Notice of Approval Hearing and the plan for dissemination of same, and (iii) an adjournment of any trial or other proceedings of this matter unrelated to the settlement approval process, if necessary, to permit the settlement approval process to occur.

3.3 Motion for Approval of Settlement

The Plaintiffs shall serve on the Defendants and file an application on consent in the Ontario Court for an order approving: (i) this Settlement Agreement with the consent of the Defendants, (ii) the Notice of Settlement Approval and the plan for dissemination of same with the consent of the Defendants, and (iii) a protocol for the Settlement Program and the distribution of funds pursuant to it. Plaintiffs shall submit the application to Defendants for review and comments for a period of ten (10) days prior to filing. As long as the comments are reasonable they will be incorporated into the application that is filed.

3.4 Effect of Court's Approval Order

Subject to the Court's approval, the order or judgment of approval of this Agreement shall:

- (1) Order publication of the Notice of Settlement Approval as well as the form, contents and method of its dissemination;

(2) Approve this Agreement and order the Parties and all members of the ASR Class to comply with it;

(3) Declare that this Agreement is reasonable, fair, adequate and in the best interest of the ASR Class;

(4) Confirm the appointment of Class Counsel, and any appointed Claims Administrator, and any Appeal Adjudicator, to process the claims by Class Members for Claim Amounts from the Settlement Amount;

(5) Enter such other orders as are needed to effectuate the terms of the Settlement Agreement; and

(6) Enjoin all members of the ASR Class from asserting and/or continuing to prosecute claims against Defendants or any other Released Person in respect of any Released Claim that such Class Member has, had or may have in the future, and enjoining members of the ASR Class from obtaining any monies or other remedies in class proceedings in British Columbia, Québec or elsewhere, or in individual actions.

3.5 Publication of Notice of Approval Hearing

Before the Settlement Agreement has been approved by the Ontario Court, Class Counsel shall, at their expense, publish the Notice of Approval Hearing. This notice will provide an opportunity for Class Members to object to the terms of the Settlement.

3.6 Publication of Notice of Settlement Approval

After this Settlement Agreement has been approved by the Ontario Court and the Effective Date is reached, Class Counsel shall publish the Notice of Settlement Approval in the manner approved by the Court using funds from the Settlement Amount in the Account. This notice will provide an opportunity for members of the ASR Class who are Eligible Claimants to file claims to receive a Claim Amount from this settlement provided they become an Approved Claimant.

SECTION 4 – SETTLEMENT PROGRAM BENEFITS AND CLAIMS

4.1 Applicable Currency

Notwithstanding anything to the contrary, all dollar amounts provided herein, including all amounts due to Approved Claimants, are stated and payable in Canadian dollars.

4.2 Applicable to ASR Implant Class and Family Class

An ASR Implant Class Member who did not opt out within the deadline of the Order certifying the ASR Implant Class that was issued on August 27, 2013 in the Ontario Proceeding may not now opt out of the ASR Implant Class or this Settlement by any means, and

this settlement results in all ASR Implant Class Members and Family Class Members releasing the Defendants and all Released Persons in respect of the Released Claims.

4.3 Payment of the Settlement Amount

(i) Conditional upon the approval of this Settlement Agreement as provided herein, the continuance of the February trial and the placement of the trial management schedule on a standstill in the Ontario Proceeding, compliance with Section 4.2 above, and the settlement of the Ontario Proceeding with prejudice and the release of the Released Claims and Allegations of members of the ASR Class, including without limitation interest, legal costs, taxes, Health Insurer Claims, and Notice and Administration Costs, Defendants agree to pay, or cause to be paid, the Settlement Amount in the amount of fifteen million five hundred thousand Canadian dollars (CDN \$15,500,000.00), into the Account in trust within thirty (30) days following the Execution Date, provided (a) no disbursements may be made from the account for any reason prior to the occurrence of the Effective Date; and (b) in the event this Settlement Agreement is not approved by the Ontario Court, is terminated according to its terms, and/or the Effective Date is not otherwise reached, the Settlement Amount and any interested earned and credited to the Account shall be forthwith returned to Defendants upon receipt of a demand by Defendants to return said funds.

(ii) The Parties understand and agree that the Defendants and any Released Persons shall not be liable for, nor shall they be a proper party to any dispute related to any alleged harm or injury suffered by any member of the ASR Class by reason of the use or alleged misuse of any part of the Settlement Amount, an erroneous disbursement or other action taken or failure to act with respect to any part of the Settlement Amount, or the administration of the claim process or the making of awards of Claim Amounts pursuant to this settlement. This Settlement is not conditional on Court approval of any specific protocol or distribution plan for the Settlement Program, which is wholly within the discretion of Class Counsel and the Ontario Court.

4.4 Requirements to Receive a Claim Amount

(i) An individual is eligible for recovery under this Settlement Agreement only if:

(1) he or she is an Eligible Claimant; and

(2) he or she proves entitlement to recovery under this Settlement Agreement pursuant to the terms and documentation requirements as set forth by Class Counsel and the terms of this Settlement Agreement.

(ii) Only members of the ASR Implant Class who have submitted all necessary information and documentation to Class Counsel, the Claims Administrator if one is appointed, or the Appeal Adjudicator, if applicable, within the applicable Claims Period, proving they are an Eligible Claimant entitled to receive compensation under the Settlement Agreement, shall receive compensation under the Settlement Agreement.

(iii) The amount of recovery for any Approved Claimant shall be established according to the patient's status as of the date the Claim Form of the Class Member is initially filed with Class Counsel, unless otherwise determined by Class Counsel.

(iv) Any amount paid to an Approved Claimant under the Settlement Agreement has been paid as damages on account of alleged personal physical injuries or illness of the Approved Claimant, including physical injuries or illness resulting from alleged emotional harm.

(v) The Settlement Amount paid in accordance with this Settlement Agreement is in full satisfaction of all of the Released Claims against the Released Persons, contingent on settlement of the Allegations of the ASR Class in the Ontario Proceeding.

(vi) The members of the ASR Class who are Eligible Claimants who become Approved Claimants shall be compensated according to the award schedule and objective criteria set forth by Class Counsel and approved by the Court from the Settlement Amount, net of any Notice and Administrative Costs, Class Counsel fees, Disbursements, and applicable taxes that the Court may approve.

(vii) The Defendants do not agree to pay ASR Class Members more than they would be entitled to receive in virtue of any ASR class action settlement previously entered into by one or more Defendants in Canada. If an ASR Class Member receives more than what he/she would have been entitled to receive in virtue of any settlement of a class action elsewhere in Canada, it will be the decision of Plaintiffs and Class Counsel, in their sole and absolute discretion, in determining the award schedule subject to Court approval, and shall in no way be deemed to be a decision attributable to the Defendants.

(viii) Any payment to a Class Member who is an Eligible Claimant and who becomes an Approved Claimant is subject to any reductions set forth in the award schedule established by Class Counsel.

(ix) Subject to paragraph (xiv), Class Members who underwent a revision surgery for a purpose other than explanting the cup of a Qualified Device are not entitled to a Claim Amount in relation to that surgery.

(x) Class Members who underwent a revision surgery that was not medically necessary are not entitled to a Claim Amount in relation to that surgery.

(xi) Subject to paragraph (xiv), Class Members whose ASR Index Surgery occurred ten (10) years or more prior to the ASR Revision Surgery on that same hip are not entitled to a Claim Amount related to that surgery.

(xii) Once the Class Counsel determines that all amounts owing under this Settlement Agreement have been paid, Class Counsel shall notify the Court and Defendants.

(xiii) The Class Counsel shall maintain the Account and shall not pay out funds from the Account in a manner inconsistent with the provisions of this Settlement Agreement except by Court order made on notice to, or on the consent of, the Defendants' Counsel.

(xiv) Class Counsel, in its sole and absolute discretion, subject to Court approval, may irrevocably waive one or more of the eligibility requirements referenced above in this Section 4.4, but the Settlement and the release of Released Persons are not conditioned on any such waiver being granted or Court approval of any such waiver. However, notwithstanding any provision to the contrary, Class Counsel may not waive the requirements that in order to receive a Claim Amount, an Approved Claimant must: (1) be a member of the ASR Class, (2) not be part of another ASR class in Canada and make or have made successful claims (*i.e.*, receives any compensation) against other ASR class action settlements in Canada or elsewhere, or have otherwise previously released his or her claim in an individual settlement, and (3) the waiver by Class Counsel of any of the eligibility requirements of this Section 4.4 and/or granting of an award pursuant to Section 4.4 (vii) above, shall in no way be interpreted as an evaluation made by Defendants of the value of any Class Member's claim.

(xv) Any individuals who are members of both this *Crisante* Ontario ASR Class Action and the *Wilson* British Columbia ASR Class Action and who are Eligible Claimants can only obtain one recovery and must seek settlement recovery from this *Crisante* Ontario ASR Class Settlement Program even if the settlement payment will be made later than the settlement payment in the *Wilson* British Columbia ASR Settlement Program.

(xvi) Class Counsel shall have sole and absolute discretion to establish an award schedule providing compensation to Class Members, subject to Court approval.

4.5 Filing Claims Pursuant to Settlement

(i) The purpose of the documentation requirements with respect to claimants' entry into the Settlement Program is to obtain information and documentation to establish that a claimant is an Eligible Claimant and qualifies to become an Approved Claimant for a settlement payment.

(ii) In order to file a claim in the Settlement Program for a settlement award, one must be an Eligible Claimant and provide to Class Counsel, or Claims Administrator if one is appointed, the following:

(1) A completed Claims Form and Claimant's Declaration to be established by Class Counsel with the approval of the Court;

(2) The Product Code/Lot Code, including product label stickers, and Contemporaneous Medical/Hospital Records sufficient to show the implantation for each ASR XL or ASR Resurfacing device surgically implanted in the Eligible Claimant in Canada;

(3) The Contemporaneous Medical/Hospital Records comprising the claimant's Medical History and Physical, Discharge Summaries, and the Operative Reports pertaining to any ASR Index Surgery, ASR Revision Surgery, and any Complication;

(4) Documents supporting loss of income and/or out of pocket expenses if they are claimed;

(5) A Physician Declaration, if required.

(iii) If the Product Code/Lot Code, including product label stickers, are unavailable to an Eligible Claimant, the Eligible Claimant should submit other Contemporaneous Medical/Hospital Records with evidence of the efforts made to obtain Product Code/Lot Code, including product label stickers.

(iv) If certain Contemporaneous Medical/Hospital Records are unavailable to an Eligible Claimant, the Eligible Claimant may submit a Physician Declaration by a physician directly involved in the aspect of the Eligible Claimant's treatment for which certain Contemporaneous Medical/Hospital Records are unavailable in support of his or her claim, together with evidence of efforts made to obtain the Contemporaneous Medical/Hospital Records, Class Counsel or the Claims Administrator may decide the claim based upon the Physician Declaration and the available Contemporaneous Medical/Hospital Records.

(v) The deadline for filing claims in the Settlement Program shall be 5:00 p.m. Toronto time on the last day of the applicable Claims Period to that Claimant, unless another deadline is set by Class Counsel.

(vi) It is the responsibility of each claimant to submit all documentation necessary to support the claim.

4.6 Claims Handling and Settlement Payment Process

(i) The administration and processing of claims of the ASR Implant Class and the payment of funds into and from the Account shall be conducted by or under the supervision of Class Counsel.

(ii) If Class Counsel approves payment of compensation to a Class Member under this settlement, the Class Member is an Approved Claimant.

(iii) Class Counsel shall determine the process by which a Class Member may appeal an adverse determination by Class Counsel to the Appeal Adjudicator for a final and non-appealable decision of a claim under this settlement.

(iv) If Class Counsel and/or the Claims Administrator determines that the materials submitted by a Class Member are deficient, Class Counsel and/or the Claims Administrator shall notify the Class Member in writing of the deficiency and shall

provide the Class Member with reasonable time to rectify the deficiency by delivering further or amended materials.

(v) All appeals will be decided by the Appeal Adjudicator selected by Class Counsel and approved by the Court for decisions based only on written submissions from the parties involved. All decisions rendered by the Appeal Adjudicator shall be final and not subject to further review or appeal. The Appeal Adjudicator shall be bound to keep confidential any information concerning Class Members or Defendants.

4.7 Administration of Agreement

Except to the extent provided for in this Settlement Agreement, any question as to the implementation and administration of this Settlement Agreement shall be determined by the Ontario Court on motion brought by the Parties, or any of them.

4.8 Total Amounts Payable by the Released Persons

The Defendants agree to pay the Settlement Amount as set forth in Section 4.3 and Section 4.10. All Notice and Administrative Costs, Class Counsel fees, Disbursements, and applicable taxes shall be paid from the Settlement Amount. Under no circumstances shall the Defendants' obligations under this Settlement Agreement, including the court approval process and settlement administration, require payment of any amounts in excess of the Settlement Amount agreed upon in this Settlement Agreement.

4.9 Releases

(i) The Approval Order approving this Settlement Agreement shall provide a release, whereby the Releasing Persons unconditionally and forever release, acquit, remise and forever discharge the Released Persons from the Released Claims and agree not to make any claim or take or continue any action, investigation or other proceedings in any forum arising out of or relating to the subject matter of the Released Claims against any other person, corporation or entity including any public authority or statutory body (including, without limitation, any health care professionals, health care providers, health care facilities, pharmacies, public authority including Her Majesty the Queen in right of Canada, or any distributor or supplier of the ASR Implant System) which might claim damages and/or contribution and indemnity and/or other relief under the provisions of the *Negligence Act*, R.S.O. 1990 c. N-1 or other comparable provincial or territorial legislation and any amendments thereto, the common law, equity, Québec Civil Law or any other statute, for any relief whatsoever, including relief of a monetary, declaratory or injunctive nature, from one or more of the Released Persons.

(ii) This Settlement Agreement shall extinguish any liens, subrogation claims, or other claims by persons or entities arising out of or related to expenses for medical services or disability benefits provided to Releasing Persons, whether by right of subrogation, assignment, contract, statute, regulation, or otherwise, relating to or arising from the sale, purchase, implantation, use, removal and/or revision of ASR Implant Systems, as well as Health Insurer Claims and thus requires any consents necessary under statute from any relevant Health Insurers.

(iii) Notwithstanding section 4.9(ii) above, or any other terms of this Settlement Agreement, and in light of separate agreements between them and one or more of the Defendants, consents from the Ontario, British Columbia and Quebec Health Insurers to this Settlement Agreement and releases are not required as a condition of settlement approval, except as set forth in (iv) below.

(iv) Any ASR Implant Class Member who is determined to be an Approved Claimant, and for whom the BC Health Insurer is entitled to assert a Health Insurer Claim despite the BC Healthcare Costs Agreement entered into between the BC Ministry of Health and the parties in *Wilson v. DePuy International Ltd. et. al.*, shall, before any payment is made to them under the Settlement Program, provide the Defendants with a consent to the individual settlement and a release of their individual Health Insurer Claim from the BC Health Insurer. To the extent any payment to the British Columbia Health Insurer is required to obtain the consent and release, it shall be paid from the Settlement Amount.

(v) The ASR Implant Class Members shall indemnify and hold harmless Released Persons from any claims or causes of action of any type brought by a person by reason of a familial relationship with such ASR Implant Class Member for losses or damages of any type arising from or in any way related to the claims of such ASR Implant Class Member that are settled pursuant to this Settlement and Approval Order.

(vi) The Approval Order shall also (a) provide that this Settlement is the exclusive remedy and that any ASR Class Members shall not pursue any Released Claims in, or take or receive any amounts in connection with (i) the British Columbia ASR Class Action, (ii) the Québec ASR Class Action, (iii) any settlements of the British Columbia ASR Class Action or Québec ASR Class Action, and/or (iv) any other class action or individual action, and (b) authorize Class Counsel to give the personal identifying information of ASR Class Members filing claims with the Settlement Program to Defendants and Defendants' Counsel, exclusively so that they can monitor compliance with this provision and for no other reason. Defendants and their counsel undertake to keep such personal identifying information strictly confidential unless necessary to be filed with a Court to enforce the terms of this Agreement.

4.10 Payment of Settlement Amount, Notice and Administration Costs

(i) The Settlement Amount shall be paid into the Account in trust within thirty (30) days following the Execution Date, provided (i) the Settlement Agreement has been fully executed, (ii) no disbursements may be made from the Account for any reason prior to the occurrence of the Effective Date; and (iii) in the event this Settlement Agreement is not approved by the Ontario Court, is terminated according to its terms, and/or the Effective Date is not otherwise reached, the Settlement Amount and any interest earned and credited to the Account shall be forthwith returned to Defendants upon receipt of a demand by Defendants to return said funds.

(ii) Class Counsel, and any appointed Claims Administrator, may draw upon the Account only after the Effective Date and subject to Court approval to pay,

or be reimbursed for, reasonable Notice and Administration Costs. In addition, the Account shall be used by Class Counsel to (a) receive and hold in trust the Settlement Amount from Defendants, (b) make Claim Amount payments from the Account to or for the benefit of Approved Claimants, (c) pay the reasonable Notice and Administration Costs of the settlement; and (d) pay Class Counsel Fees and Disbursements or other counsel fees and disbursements owing under Section 9, plus applicable taxes; all payments from the Account are subject to Court approval and can only occur after the Effective Date, except for any required return of funds from the Account to Defendants.

4.11 Appointment and Role of any Claims Administrator

(i) Class Counsel may cause a Claims Administrator to be appointed by the Ontario Court for the purpose of assisting Class Counsel in administering the Settlement. The Claims Administrator, if any, shall be subject to removal by the Ontario Court.

(ii) The reasonable costs of any Claims Administrator appointed shall be the responsibility of the ASR Class and paid from the Account.

(iii) The Claims Administrator, if any, shall be bound to keep confidential any information concerning Class Members or Defendants.

(iv) Class Counsel will be responsible for defining and supervising the activity of any Claims Administrator that is appointed.

(v) Class Counsel shall retain all records relating to the claim of each Class Member for two years following the expiration of the Claim Period.

SECTION 5 – SETTLEMENT AMOUNT AND ACCRUED INTEREST

5.1 Settlement Distribution

The Settlement Amount, or any part thereof, held by Class Counsel shall be held in the Account in trust for the benefit of Class Members who are Approved Claimants, and shall only be paid to Approved Claimants in accordance with the provisions of this Settlement Agreement or as otherwise authorized by the Court, provided the Effective Date is reached.

5.2 Monies in the Account

(i) In no event shall the Defendants have any responsibility, financial obligations, or liability whatsoever with respect to the investment, distribution, use, or administration of monies in the Account, including, but not limited to, the costs and expenses of such investment, distribution, use and administration, and Class Counsel Fees.

(ii) The funds payable under the Settlement Agreement that Defendants are required to pay shall be deposited into the Account. Class Counsel shall distribute payments under the Settlement Agreement from the Account under the supervision of the Ontario Court. In the event that there are any funds remaining in the

Account after payment of all Approved Claims, Notice and Administration Costs, Class Counsel Fees and Disbursements, and applicable taxes, such unclaimed balance shall be remitted to a charity in the Province of Ontario to be selected by the Court following submissions by Plaintiffs and Defendants.

5.3 Taxes and Interest

(i) All interest earned on funds in the Account shall become and remain part of the Account.

(ii) Plaintiffs, the ASR Class and Class Counsel shall bear all risks related to investment of the funds in the Account.

(iii) All funds held by Class Counsel in the Account shall be deemed and considered to be held in trust and shall remain subject to the jurisdiction of the Ontario Court until such time as such funds are distributed pursuant to the Settlement Agreement.

(iv) All taxes payable on any interest that accrues on the funds in the Account shall be the responsibility of the ASR Class. Class Counsel shall be solely responsible to fulfill all tax reporting and payment requirements arising from the amounts held in the Account, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due, with respect to the income earned by the amounts held in the Account, shall be paid from the Account.

(v) The Defendants shall have no responsibility to make any tax filings relating to the Account, to pay tax on any income earned by the funds in the Account or pay any taxes on the monies in the Account, unless and only to the extent that such funds are returned to Defendants.

SECTION 6 – OBJECTIONS

6.1 Procedure to Object

(i) An ASR Class Member may object to the approval of the Settlement by sending a written objection by pre-paid mail, courier, or email to Class Counsel. Class Counsel is required to forward all objections to Defendants' Counsel promptly after receiving an objection.

(ii) Objections must be received before 5:00 p.m. Toronto time on a date that is five (5) days before the date of the Approval Hearing.

(iii) A proposed Class Member who wishes to object to the approval of the Settlement shall state in his/her/their objection:

(1) The full name, current mailing address, telephone number, and email address of the person who is objecting;

(2) A brief statement of the nature and reasons for the objection;

(3) A declaration that the person believes he/she/they is a member of the ASR Implant Class and the reason for that belief including, if available, the reference/catalogue and lot numbers of his/her/their Qualified Device;

(4) Whether the person intends to appear at the Approval Hearing or intends to appear by counsel, and, if by counsel, the name, address, telephone number, fax number, and email address of counsel; and

(iv) Class Counsel shall, no later than three (3) days before the date of the Approval Hearing, report to the Court, by affidavit, with a copy to counsel for the Defendants, the names of persons who objected and copies of any objections.

SECTION 7 – RELEASES AND DISMISSALS

7.1 Release of Released Claims Against Released Persons

(i) Upon the Effective Date, and in consideration of the payments of the amounts required under this Settlement Agreement, the Releasing Persons forever and absolutely release the Released Persons from the Released Claims. For the consideration provided herein, the Releasing Persons agree not to make any demand or claim, or take or continue any proceedings arising out of or relating to the subject matter of the Released Claims, against any other person, corporation, or entity (including, without limitation, any health care professionals, health care providers, and hospitals or other health care facilities) that might claim damages and/or contribution and indemnity and/or other relief under the provisions of the *Negligence Act* or any other comparable provincial legislation and any amendments thereto, the common law, equity, Quebec civil law, or any other statute, code or regulation, for any relief whatsoever, including relief of a monetary, exemplary, declaratory, or injunctive nature, from one or more of the Released Persons.

(ii) Without limiting any other provisions herein, each Class Member who did not timely opt out of the ASR Class, whether or not he/she/they submits a claim or otherwise receives an award, will be deemed by this Settlement Agreement to have completely and unconditionally released and forever discharged the Released Persons from any and all Released Claims, including all claims, actions, causes of action, suits, debts, duties, accounts, bonds, covenants, contracts, and demands whatsoever that were asserted, or could have been asserted, in the litigation that is the subject of this Settlement Agreement.

(iii) Each Class Member, whether or not he/she/they submits a claim or otherwise receives a Claim Amount, will be forever barred and enjoined from continuing, commencing, instituting, prosecuting, or seeking to claim or recovering any compensation of any nature or kind in any action, litigation, investigation, or other proceeding in any court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum, or any other forum, directly, representatively or derivatively,

or as a class member, asserting against any of the Defendants or Released Persons any claims that relate to or constitute any Released Claims covered by this Settlement Agreement.

7.2 No Further Claims

The Releasing Persons shall not now or hereafter institute, continue, maintain, or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of, or as part of, any class or any other person, any action, suit, cause of action, claim, or demand against any Released Persons, or against any other person who may claim contribution or indemnity from any Released Person in respect of any Released Claim. The Parties agree that no Class Members shall recover, directly or indirectly, any sum from Defendants or Released Persons other than the sum authorized under this Settlement Agreement in connection with the ASR Implant and ASR Revision Surgery.

7.3 Dismissal of the Ontario and Related Class Proceedings

(i) The Ontario Proceeding shall be settled and dismissed with prejudice as against the Defendants.

(ii) The following lawsuits relating to the ASR Implant System shall be dismissed on consent, and with Court approval (as required): *Rodney Day v. DePuy International et. al* (#1001-16627, Court of Queen's Bench of Alberta); *Jo-Anne Scharf v. DePuy Orthopaedics Inc. et al.* (Hfx. No. B4d055, Supreme Court of Nova Scotia), *Donald Manning v. DePuy International Ltd., et al.* (Hfx. No. 340390, Supreme Court of Nova Scotia), and *McCarroll v. DePuy Orthopaedics, Inc. et al.* (#S/C/11/11, Court of Queen's Bench of New Brunswick).

SECTION 8 – TERMINATION OF SETTLEMENT AGREEMENT

8.1 Right of Termination

(i) The Defendants shall have the right, in their sole discretion, to terminate this Settlement Agreement if:

(1) the Ontario Court declines to continue *sine die* any trial scheduled in the Ontario Proceeding to permit the settlement approval process to occur;

(2) the Ontario Court declines to approve material parts of this Settlement Agreement or any term or part thereof;

(3) any order approving the Settlement Agreement does not become a Final Order and/or the Effective Date does not occur;

(4) the form and content of any of the Final Orders approved by the Ontario Court do not materially comply with the terms of this Settlement Agreement;

(ii) To exercise a right of termination, the Defendants shall deliver a written notice of termination to Class Counsel. Upon delivery of such a written notice, this Settlement Agreement shall be terminated and, except as provided for in Sections 8.2 and 8.3, it shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

8.2 If Settlement Agreement Is Terminated

If this Settlement Agreement is not approved by the Ontario Court, is terminated in accordance with its terms, or otherwise fails to take effect for any reason:

(1) Any order approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise;

(2) All negotiations, statements, and proceedings relating to the settlement and the Settlement Agreement shall be deemed to be without prejudice to the rights of the Parties, and the Parties shall be deemed to be restored to their respective positions existing immediately before it was executed; and

(3) All funds in the Account (including accrued interest) shall be returned to Defendants' Counsel within 10 days after the date of termination and no further deposits shall be made into the Account.

8.3 Survival of Provisions After Termination

If this Settlement Agreement is not approved by the Ontario Court, is terminated in accordance with its terms, or otherwise fails to take effect for any reason, the provisions of this Section and Sections 8.2 and 11 (i) and (ii), and the Recitals and Definitions applicable thereto shall survive the termination and continue in full force and effect.

SECTION 9 – LEGAL FEES AND DISBURSEMENTS

9.1 Class Counsel Fees

(i) Court approved Class Counsel Fees, Disbursements, and applicable taxes shall be paid from the Settlement Amount, provided the Effective Date has occurred.

(ii) Any additional Class Counsel Fees payable by Approved Claimants, if any, which may be determined and approved by the Ontario Court, shall be deducted by Class Counsel from the settlement awards to Approved Claimants and paid to Class Counsel.

9.2 Procedure

(i) Class Counsel will bring motions, with notice to Defendants' Counsel, to the Ontario Court for determination and approval of Class Counsel Fees and Disbursements payable out of the Settlement Amount.

(ii) Class Counsel Fees and Disbursements may be paid out of the Account only after Class Counsel obtains the approval of the Ontario Court, such approval is final and no longer appealable, and the Effective Date of the Settlement has occurred. Payment of any Additional Class Counsel Fees in respect of Class Members is subject to approval of the Ontario Court. For greater certainty, this does not include any fees that may be payable to Class Counsel in relation to individual retainers.

(iii) Class Members who have retained, or in the process of making a claim do retain, lawyers other than Class Counsel to assist them in making their individual claims in this Settlement shall be responsible for the legal fees and expenses of such lawyers.

(iv) Class Members are responsible for their own costs in completing any required Claim Form and/or Claimant Declaration, retrieving and producing medical and hospital records to Class Counsel or a Claims Administrator, obtaining any required Physician Declaration, and otherwise filing and perfecting their claims under this Settlement Agreement. Neither Class Counsel nor Defendants are responsible for these costs and expenses.

9.3 Payment of Appeal-Related Fees and Costs

Payment of all reasonable and necessary fees and costs charged by those persons serving as Claims Administrator or Appeal Adjudicator by written agreement with Class Counsel will be paid from the Settlement Amount from the Account as a Notice and Administrative Cost, subject to Court approval and provided the Effective Date has occurred, unless otherwise provided in the Court-approved protocol for the Settlement Program.

9.4 Settlement Not Conditioned on Approval of Fees

The Settlement Agreement is not conditioned on the Court approving any specific requests for Class Counsel Fees and Disbursements or any other Notice and Administrative Costs relating to the Settlement Program.

SECTION 10 – ADMINISTRATION AND IMPLEMENTATION

10.1 Mechanics of Administration

Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement shall be determined by Class Counsel in the form of a Claim Protocol with the approval of the Ontario Court. This Settlement Agreement does not require that the Ontario Court approve any specific Claim Protocol for the

Settlement Program, but does require that the Ontario Court approve this Settlement Agreement overall and that the Effective Date occurs pursuant to the terms of this Settlement Agreement.

10.2 Notices Required

(i) The ASR Class shall be given notice of:

(1) The hearing at which the Ontario Court will be asked to approve the Settlement Agreement; and

(2) The Court Order approving this Settlement, if applicable.

(ii) Class Counsel and Defendants' Counsel will jointly prepare such respective Notices as may be required, substantially in the forms attached as Schedule C and Schedule D, respectively, as well as a plan for dissemination of the Notice of Hearing at Schedule C (Schedule E) and a plan for the dissemination of the Notice of Approval Order at Schedule D, if applicable (Schedule F). Counsel acknowledge that all Notices and the respective plans for the publication of two Notices must be approved by the Ontario Court. No notices shall be published until such time as they are approved by the Ontario Court.

SECTION 11 – NO ADMISSION OF LIABILITY

(i) The Parties agree that whether or not this Settlement Agreement is approved by the Ontario Court, or is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions, and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed, or interpreted to be an admission of any violation of any civil code, statute or law, or of any wrongdoing or liability by the Released Persons, or of the truth of any of the claims or allegations made in the Ontario Proceeding or in any other pleading filed by the Plaintiffs.

(ii) The Parties further agree that whether or not this Settlement Agreement is approved by the Ontario Court, or is terminated, neither this Settlement nor any document relating to it shall be offered in evidence in any action or proceeding in any court, agency, or tribunal, except to seek court approval of this Settlement Agreement or to give effect to and enforce the provisions of this Settlement Agreement.

SECTION 12 – MISCELLANEOUS

12.1 Motions for Directions

(i) The Plaintiffs, ASR Class, Class Counsel, any Claims Administrator, or the Defendants may apply to the Ontario Court for directions in respect of the implementation and administration of this Settlement Agreement.

(ii) All motions contemplated by this Settlement Agreement, including applications to the Ontario Court for directions, shall be on notice to the Parties.

12.2 Released Persons Have No Liability for Administration

The Released Persons shall have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement.

12.3 Headings, etc.

In this Settlement Agreement, the division of the Settlement Agreement into Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement. A reference or cross-reference to a particular Section is a reference to a section of this Settlement Agreement unless stated otherwise. The terms “this Settlement Agreement,” “the Settlement Agreement,” “hereof,” “hereunder,” “herein,” “hereto,” “below,” and similar expressions refer to this Settlement Agreement and not to any particular section or portion of this Settlement Agreement unless so specifically stated.

12.4 Ongoing Jurisdiction

The Ontario Court shall retain exclusive jurisdiction over all matters relating to the implementation and enforcement of this Settlement Agreement.

12.5 Governing Law

This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario.

12.6 Entire Agreement

This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes any and all prior and contemporaneous understandings, undertakings, negotiations, representations, communications, promises, agreements, agreements in principle, and memoranda of understanding in connection herewith. The Parties agree that they have not received or relied on any agreements, representations, or promises other than as contained in this Settlement Agreement. None of the Parties shall be bound by any prior obligations, conditions, or representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein. This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto, and any such modification or amendment must be approved by the Ontario Court.

12.7 Survival

The representations and warranties contained in this Settlement Agreement shall survive its execution and implementation.

12.8 Counterparts

This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile signature shall be deemed an original signature for purposes of executing this Settlement Agreement. This Settlement Agreement may be delivered and is fully enforceable in either original, faxed, or other electronic form provided that it is duly executed.

12.9 Negotiated Agreement

This Settlement Agreement has been the subject of negotiations and discussion among the Parties, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

12.10 Language

The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. However, the notices also shall be translated in French. The French translation of the notices pursuant to this Settlement Agreement shall be paid or reimbursed from the Account as a Notice and Administrative Cost, subject to Court approval and provided the Effective Date occurs.

12.11 Dates

Dates referred to in this Settlement Agreement may be altered with the written consent of the Parties and with the approval of the Ontario Court.

12.12 Communications Regarding This Settlement

The Parties agree that no public statements shall be made by them regarding these Proceedings or their settlement that are in any way inconsistent with the terms of the Settlement Agreement. In particular, the Parties agree that any public statements they make regarding these Proceedings will indicate that the settlement has been negotiated and agreed by the parties and approved by the Ontario Court without any admissions or findings of liability or wrongdoing and without any admissions or conclusions as to the truth of any of the facts alleged in the Proceedings, all of which are specifically denied.

12.13 Schedules

The Schedules annexed hereto form part of this Settlement Agreement and are:

Schedule A – Proposed Ontario Court Order on Notice of Hearing for Settlement Approval

Schedule B – Proposed Ontario Court Order on Approval of Settlement Agreement

Schedule C – Form of Notice of Settlement Approval Hearing

Schedule D – Form of Notice of Settlement Approval

Schedule E – Plan for Dissemination of Hearing Notice (Schedule C)

Schedule F – Plan for Dissemination of Notice of the Order on Settlement Approval (Schedule D)

12.14 Acknowledgements

Each of the Parties hereby affirms and acknowledges that:

(i) He, she, or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;

(ii) The terms of this Settlement Agreement and the effects thereof have been fully explained to him, her, or the Party's representative by his, her, or its counsel;

(iii) He, she, or the Party's representative fully understands each term of the Settlement Agreement and its effect; and

(iv) No Party has relied upon any statement, representation, or inducement (whether material, false, negligently made, or otherwise) of any other Party with respect to the first Party's decision to execute this Settlement Agreement.

12.15 Authorized Signature

Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

12.16 Notice

Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication, or document shall be provided by email or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

(i) For Plaintiffs, ASR Implant Class and Class Counsel:

Colin P. Stevenson
Stevenson Whelton LLP
15 Toronto Street, Suite 200
Toronto, ON M5C 2E3
Tel. (416) 599-7900
Email: cstevenson@swlawyers.ca

--and--

Megan B. McPhee
Kim Spencer McPhee Barristers P.C.
1200 Bay St., Suite 1203
Toronto, Ontario
M5R 2A5
Tel. (416) 596-1414
Email : mbm@complexlaw.ca

--and--

Joel Rochon
Rochon Genova LLP
121 Richmond Street West, Suite 900
Toronto, Ontario
M5H 2K1
(416) 548-9874
Email: jrochon@rochongenova.com

--and--

Harvin D. Pitch
c/o Teplitzky, Colson LLP
70 Bond Street
Toronto, ON M5B 1X3
Tel. (416) 865-5310
Email: hpitch@teplitzkycolson.com

(ii) For Defendants and Defendants' Counsel:

Gordon McKee
Blake, Cassels & Graydon LLP
199 Bay Street
Suite 4000, Commerce Court West
Toronto ON M5L 1A9
Canada
Telephone: 416-863-2400
Email: gordon.mckee@blakes.com

--and--

Susan M. Sharko
Faegre Drinker Biddle & Reath LLP
600 Campus Drive
Florham Park, New Jersey, 07932-1047
USA
Telephone: 973-549-7350
Facsimile: 973-360-9831
Email: susan.sharko@faegredrinker.com

WHEREFORE, the Parties have executed this Settlement Agreement on the dates provided below.

**BY AND ON BEHALF OF
PLAINTIFFS, ASR IMPLANT CLASS,
AND CLASS COUNSEL:**

STEVENSONS WHELTON LLP



Date: February 22, 2021

By: _____
Colin P. Stevenson

**KIM SPENCER MCPHEE
BARRISTERS P.C.**



Date: February 22, 2021

By: _____
Megan B. McPhee

ROCHON GENOVA LLP

Date: _____, 2021

By: _____
Joel P. Rochon

HARVIN D. PITCH



Date: February 22, 2021

Harvin D. Pitch
c/o Teplitsky Colson LLP

DEFENDANTS

DePuy Orthopaedics, Inc., DePuy International Ltd., DePuy, Inc. and Johnson & Johnson, Inc.

Date: _____, 2021

By: _____

Printed: _____

Title: _____

[Schedules A-F Follow]

SCHEDULE A

SCHEDULE A – PROPOSED ONTARIO COURT ORDER PROVIDING NOTICE OF HEARING ON SETTLEMENT APPROVAL

Court File No. CV-10-415755-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE) THE
)
MR. JUSTICE BELOBABA) DAY OF, 2021

B E T W E E N:

(Court Seal)

JOSEPH CHARLES CRISANTE, KATHERINE CRISANTE, LYNNE SLOTEK
and LARRY SLOTEK

Plaintiffs

- and -

DEPUY ORTHOPAEDICS, INC., DEPUY INTERNATIONAL LIMITED,
DEPUY, INC. and JOHNSON & JOHNSON INC.

Defendants

THIS MOTION by the Representative Plaintiffs for an order approving the form of notice that will advise class members of the hearing to approve the proposed settlement, as well as the manner of disseminating and publicizing such notice, was heard this day in Toronto.

UPON BEING ADVISED that, subject to Court approval, the Representative Plaintiffs and the Defendants have entered into a proposed Settlement Agreement attached hereto as Schedule “A”, and that the Defendants have consented to the terms of this Order;

1. **THIS COURT ORDERS** that for the purposes of this Order, the definitions set out in the proposed Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that the motion for settlement approval in this proceeding shall be heard on **[date]** at the Courthouse, 361 University Avenue in Toronto, Ontario, or at such other

place and time or on such other terms, as this Court may direct in light of COVID-19 protocols (the "Approval Hearing").

3. **THIS COURT ORDERS** that the Notice of Settlement Approval Hearing is approved in substantially the form attached to the Settlement Agreement as Schedule "C".

4. **THIS COURT ORDERS** that the Notice of Settlement Approval Hearing shall be disseminated and published in accordance with Schedule "E" of the Settlement Agreement.

5. **THIS COURT ORDERS** that the Notice of Settlement Approval Hearing and the method of publication and dissemination of the Notice of Settlement Approval Hearing as set forth in Schedule "E" of the Settlement Agreement (the "Notice Plan") constitutes fair and reasonable notice to the class of the Settlement Approval Hearing.

6. **THIS COURT ORDERS** that the Notice of Settlement Approval Hearing shall be published in English.

7. **THIS COURT ORDERS** that the notices under the Settlement Agreement shall also be translated in French and be posted on Class Counsels' respective websites and made available to Class Members upon request. The French translations of all notices pursuant to this Settlement Agreement shall be paid or reimbursed from the Account as a Notice and Administrative Cost.

BELOBABA, J.

SCHEDULE B

SCHEDULE B — PROPOSED ONTARIO COURT ORDER ON APPROVAL OF CLASS SETTLEMENT

Court File No. CV-10-415755-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

(Court Seal)

JOSEPH CHARLES CRISANTE, KATHERINE CRISANTE, LYNNE SLOTEK
and LARRY SLOTEK

Plaintiffs

- and -

DEPUY ORTHOPAEDICS, INC., DEPUY INTERNATIONAL LIMITED,
DEPUY, INC. and JOHNSON & JOHNSON INC.

Defendants

Proceeding under the Class Proceedings Act, 1992, S.O. 1992, c.6

ORDER

THIS MOTION by the Representative Plaintiffs for approval of the settlement of this action pursuant to s. 29 of the *Class Proceedings Act, 1992*, in accordance with the terms of the Settlement Agreement, was heard this day in Toronto, Ontario.

UPON READING the motion record of the Representative Plaintiffs, and upon hearing the submissions of Class Counsel and the counsel for the Defendants, fair and reasonable notice of the within hearing having been provided to the ASR Class pursuant to the Order of this Court dated [insert], and upon being advised that the parties consent to this Order,

THIS COURT ORDERS AND DECLARES that:

Settlement Approval

1. The definitions set out in the Settlement Agreement apply and are incorporated into this Order.

2. References to the *Class Proceeding Act, 1992* in this Order refer to the *Class Proceedings Act, 1992*, as it read immediately before section 35 of Schedule 4 to the *Smarter and Stronger Justice Act, 2020* came into force.

3. The settlement of this action, as set out in the Settlement Agreement, is fair and reasonable and in the best interests of the ASR Class and is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992*, and shall be implemented in accordance with its terms.

4. The Defendants shall pay the amounts required under the Settlement Agreement subject to the rights of termination in Section 8 of the Settlement Agreement.

Notice and Notice Plan

5. The form and content of the Notice of Settlement Approval shall be substantially in the form attached as Schedule “D” to the Settlement Agreement.

6. Class Members shall be given notice of this Order in accordance with the plan attached as Schedule “F” to the Settlement Agreement (the “Notice Plan”).

7. The Notice Plan for publishing and disseminating the Notice of Settlement Approval as described in Schedule “F” of the Settlement Agreement satisfies the requirements of s. 19 of the *Class Proceedings Act, 1992*, constitutes fair and reasonable notice of the Settlement Approval, and shall be implemented as soon as reasonably possible after the Effective Date of the Settlement Agreement is reached.

8. The Notice of Settlement Approval shall be published in English. The Notice of Settlement Approval shall also be translated in French.

9. The Defendants shall be entitled to review and approve any final proposed print copy of the newspaper notice prior to publication.

Claims Administrator

10. [] is hereby appointed as the Claims Administrator.

Class Release and Dismissal

11. The Settlement Agreement and this Order are binding upon the ASR Class, whether or not such person in the ASR Class receives or claims compensation, including persons who are minors or are mentally incapable.

12. Upon the Effective Date, the Released Persons, as defined in the Settlement Agreement, are forever and absolutely released and discharged by the Releasing Persons from the Released Claims. The Releasing Persons are barred from making any claim or taking or continuing any proceedings arising out of or relating to the Released Claims against any other person, corporation, or entity (including, without limitation, any health care professionals, health care providers, or health care facilities) that might claim damages and/or contribution and indemnity and/or other relief under the provisions of the *Negligence Act* or any other comparable provincial legislation and any amendments thereto, the common law, equity, Quebec civil law, or any other statute, for any relief whatsoever, including relief of a monetary, exemplary, declaratory, or injunctive nature, from one or more of the Released Persons.

13. The Releasing Persons shall not now or hereafter institute, continue, maintain, or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of, or as part of, any class or any other person, any action, suit, cause of action, claim, or demand relating to the Released Claims against any Released Persons.

14. This Settlement is the exclusive remedy available to the ASR Class and any ASR Class Members shall not pursue any claim in, or take or receive any amounts in connection with (i) the British Columbia ASR Class Action, (ii) the Québec ASR Class Action, (iii) any settlements of the British Columbia ASR Class Action or Québec ASR Class Action and/or (iv) any other class action or individual action in respect of the ASR Implants.

15. Class Counsel shall provide to the Defendants and Defendants' Counsel the personal identifying information of each ASR Class Member filing a claim in the Settlement, so that they can monitor compliance with paragraph 12 of this Order, and for no other reason. The Defendants and their counsel shall keep such personal identifying information strictly confidential unless necessary to be filed with a court in order to enforce the terms of the Settlement.

16. Neither the Settlement Agreement (including all terms thereof), nor its performance and implementation, shall be construed as any admission by the Defendants, including but not limited as to: (1) the validity of any claim, theory, or fact; (2) any liability, fault, or responsibility; or (3) the existence, cause, or extent of any damages or losses alleged or suffered by the Representative Plaintiff or any Class Member.

17. This Court shall have continuing jurisdiction over the implementation and enforcement of the Settlement Agreement.

18. This action is hereby dismissed without costs and with prejudice.

BELOBABA, J.

SCHEDULE C

SCHEDULE C — PROPOSED NOTICE OF HEARING OF SETTLEMENT APPROVAL

NOTICE OF ASR HIP IMPLANT SETTLEMENT APPROVAL HEARING

Are you a resident of Canada other than British Columbia or Québec who underwent surgery to implant a DePuy ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System?

This notice may affect your rights. Please read carefully.

A class action lawsuit entitled *Crisante, et al., v. DePuy Orthopaedics, Inc., et al.*, Civil Action No. CV-10-415777-00CP, is pending in the Ontario Superior Court of Justice regarding allegations that the DePuy ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System was defective, and that they failed, requiring premature revision surgery (“*Crisante* Action”). An ASR Implant Class and Family Class have previously been certified, covering residents in Canada except for British Columbia and Québec. The Defendants, while not admitting liability, have agreed to a settlement of the *Crisante* Action. For a copy of the Settlement Agreement or Claims Protocol, or for more information, please contact Class Counsel or the Claims Administrator listed below.

Who is a Class Member and Potentially Eligible to Receive a Settlement Award?

The certified ASR Class includes all persons resident in Canada other than British Columbia or Québec who underwent the surgical implantation of the DePuy ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System (collectively “ASR Implant Systems”) in a surgery occurring in Canada (“ASR Index Surgery”). The ASR Class also includes eligible family members of those class members who underwent implantation. Eligibility to receive a settlement award will be determined on the basis of factors set out in the Claims Protocol to be approved by the Court. Please contact Class Counsel for additional information.

PLEASE NOTE that if you have already participated in related settlements in British Columbia and Québec or any other class action related to the ASR Implant Systems, you are not an Eligible Claimant for the purposes of this Settlement.

PLEASE NOTE FURTHER that any individuals who are members of both this *Crisante* Ontario ASR Class Action and the *Wilson* British Columbia ASR Class Action and who are Eligible Claimants can only obtain one recovery and must seek settlement recovery from this *Crisante* Ontario ASR Class Settlement Program even if the settlement payment will be made later than the settlement payment in the *Wilson* British Columbia ASR Settlement Program. Please contact Class Counsel below if you are uncertain whether you are a member of both classes.

The Terms of Settlement

The Settlement provides certain compensation to Class Members who are Eligible Claimants and who timely submit all forms and documentation required under the Settlement Agreement, less certain deductions to be approved by the Court, including legal fees and disbursements. The amount of compensation per Eligible Claimant will depend on how many Eligible Claimants submit claims under the Settlement. Please refer to the Settlement Agreement and Claims Protocol or contact Class Counsel for additional information on specific terms and conditions.

Court Hearings and Your Right to Participate

A motion to approve the Settlement Agreement is scheduled to be heard by the Ontario Superior Court of Justice in Toronto on **[date]** at **[time]** and at **[place]**. Class Counsel will also ask the court to approve an award of fees and disbursements for their work in connection with the *Crisante* Action during the hearing.

Persons who are Class Members who do not oppose the settlement need not appear at the hearings or take any other action at this time to indicate their desire to participate in the Settlement.

The ability to opt out of the ASR Implant Class in the *Crisante* Action already has expired. There is no further ability to opt out of the Class or Settlement. However, all persons who are Class Members have the right to present arguments to the Ontario Court as regards the Settlement, or to object to the Settlement, by delivering a written submission to Class Counsel on or before **[date]**. A Class Member who wishes to object to the Settlement shall provide in his or her objection:

- (a) The full name, current mailing address, telephone number, and email address of the person who is objecting;
- (b) A brief statement of the nature and reasons for the objection;
- (c) A declaration that the person believes he or she is a Class Member of the ASR Implant Class, or its related Family Class, and the reason for that belief including, if available, the catalogue and lot numbers of his/her ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System; and
- (d) Whether the person intends to appear at the Approval Hearing or intends to appear by counsel and if by counsel, the name, address, telephone number, and email address of counsel, and
- (e) A declaration under the penalty of perjury that the foregoing information is true and correct.

For Additional Information and a Copy of the Settlement Agreement:

We encourage you to email Class Counsel or check the website [insert] after [insert date] to learn whether the Settlement has been approved and the process for making claims.

Please contact Class Counsel or the Claims Administrator below:

Class Counsel in *Crisante* Action:

Colin Stevenson
Stevenson Whelton LLP
15 Toronto Street, Suite 200
Toronto, ON M5C 2E3
416-599-7900
cstevenson@swlawyers.ca

Harvin Pitch
Teplitsky Colson LLP
70 Bond St #200
Toronto, ON M5B 1X3
416-865-5310
hpitch@teplitskycolson.com

Megan B. McPhee
Kim Spencer McPhee Barristers P.C.
1200 Bay Street, Suite 1203
Toronto ON M5R 2A5
Tel: 416-596-1414
mbm@complexlaw.ca

Joel P. Rochon
ROCHON GENOVA LLP
Barristers and Solicitors
121 Richmond Street West
Suite 900
Toronto ON M5H 2K1
Tel: 416-363-1867
jrochon@rochongenova.com

Claims Administrator:

[Name]
[Address]
[City, Province, Postal Code]
[Tel]
[Email]

SCHEDULE D

SCHEDULE D — FORM OF NOTICE OF SETTLEMENT APPROVAL

Are you a resident of Canada other than British Columbia or Quèbec who underwent surgery to implant a DePuy ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System?

This notice may affect your rights. Please read carefully.

A class action lawsuit entitled *Crisante, et al., v. DePuy Orthopaedics, Inc., et al.*, Civil Action No. CV-10-415777-00CP, was initiated in the Ontario Superior Court of Justice regarding allegations that the DePuy ASR™ XL Acetabular Hip System or the ASR™ Hip Resurfacing System was defective, and that they failed, requiring premature revision surgery (“*Crisante Action*”). The Ontario Court certified an ASR Class covering residents in Canada except for British Columbia and Quebec as a class action on August 27, 2013. The Defendants, while not admitting liability, have agreed to a settlement of the *Crisante Action*. The Ontario Court approved the Settlement Agreement on [date].

The Settlement Agreement and Claims Protocol defines the terms used in this Notice. For a copy of the Settlement Agreement and Claims Protocol, please contact Class Counsel or the Claims Administrator at the address below.

Who is in the ASR Class and Potentially Eligible to Receive a Settlement Award?

The ASR Class includes:

- (a) all persons resident in Canada other than British Columbia and Québec who have been implanted with DePuy ASR XL Acetabular Hip Systems and/or the DePuy ASR Hip Resurfacing System (the “ASR Implants”) which were variously designed, developed, tested, manufactured, licensed, assembled, labeled, marketed, distributed and/or sold by one or more Defendants; and
- (b) all persons residents of Canada who by virtue of a personal relationship to one or more members of the ASR Implant Class have standing pursuant to section 61(1) of the *Family Law Act*, R.S.O. 1990, c. F.3 as amended (or the similar legislation in the other provinces and territories).

An Eligible Claimant under the Settlement is a member of the ASR Implant Class above who (a) underwent an ASR Index Surgery, and (b) either has undergone a Revision Surgery of their ASR Implant as defined in the Claims Protocol, or has been unable to undergo a Revision Surgery of their ASR Implant for medical reasons, and who has not timely and validly opted out of the class action. Eligible Claimants include family members of Eligible Claimants and the duly appointed estate or personal representatives of Eligible Claimants who had ASR Revision Surgery, but who are now deceased or otherwise incompetent to act on their own behalf.

PLEASE NOTE that if you have already participated in related settlements in British Columbia and Quèbec or any other class action related to the ASR Implants, you are not an Eligible Claimant for the purposes of this Settlement.

PLEASE NOTE FURTHER that any individuals who are members of both this *Crisante* Ontario ASR Class Action and the *Wilson* British Columbia ASR Class Action and who are Eligible Claimants can only obtain one recovery and must seek settlement recovery from this *Crisante* Ontario ASR Class Settlement Program even if the settlement payment will be made later than the settlement payment in the *Wilson* British Columbia ASR Settlement Program. Please contact Class Counsel below if you are uncertain whether you are a member of both classes.

The Terms of Settlement

The settlement provides certain compensation to Class Members who are Eligible Claimants and who timely submit all forms and documentation required under the Settlement Agreement, less certain deductions approved by the Court, including legal fees and disbursements. The claim form and exact documentation required to make a claim and potential award amounts will be set forth on Class Counsel’s website and the Claim Administrator’s website. The total amount of compensation per Eligible Claimant who is approved will depend on how many Eligible Claimants submit claims under the Settlement and are approved, and will not be known until after the expiry of the Claims Period. Amounts may also be payable to family members of approved claimants.

Please refer to the Settlement Agreement for specific terms and conditions. The Settlement Agreement is posted at [www.Website.com]. You may also contact the Claims Administrator or Class Counsel for additional information.

To Make a Claim

To be entitled to a payment pursuant to the Settlement Agreement, Class Members must be Eligible Claimants and submit all required forms and documentation to the Claims Administrator on or before the expiration of the Claims Period.

The Claims Period expires on _____. Please see the Settlement Agreement for all terms.

For More Information or to Obtain a Claim Form

Please contact Class Counsel or the Claims Administrator below:

Class Counsel in *Crisante* Action:

Colin Stevenson
Stevenson Whelton LLP
15 Toronto Street, Suite 200
Toronto, ON M5C 2E3
416-599-7900
cstevenson@swlawyers.ca

Claims Administrator:

[Name]
[Address]
[City, Province, Postal Code]
[Tel]
[Email]

Harvin Pitch
Teplitsky Colson LLP
70 Bond St #200
Toronto, ON M5B 1X3
416-865-5310
hpitch@teplitskycolson.com

Megan B. McPhee
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1200 Bay Street, Suite 1203
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mbm@complexlaw.ca

Joel P. Rochon
ROCHON GENOVA LLP
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121 Richmond Street West
Suite 900
Toronto ON M5H 2K1
Tel: 416-363-1867
jrochon@rochongenova.com

SCHEDULE E

**SCHEDULE E -PLAN FOR DISSEMINATION OF NOTICE OF SETTLEMENT
APPROVAL HEARING**

The **Notice of Approval Hearing** shall be disseminated by the following means:

1. Class Counsel shall send a copy of the Notice of Approval Hearing by mail or email to all Class Members who have provided contact information to Class Counsel for the purposes of this action.
2. Class Counsel shall post a copy of the Notice of Approval Hearing on their respective websites.
3. Class Counsel shall arrange for publication of the Notice of Approval Hearing in English unless otherwise noted in the following Canadian publications (single insertion, ¼ panel or equivalent for digital editions where indicated), with such publication to occur as soon as reasonably feasible following the Order Approving the Notice of Approval Hearing:
 - (a) published once in The Globe and Mail (National Edition).
 - (b) published once in each of the following newspapers:
 - (i) Star (Toronto)
 - (ii) Ottawa Citizen (digital edition)
 - (iii) Spectator (Hamilton) (paper and digital editions)
 - (iv) Le Journal de Montréal (French digital edition)
 - (v) Chronicle (Halifax)
 - (vi) Journal (Edmonton)
 - (vii) Leader Post (Regina)
 - (viii) Herald (Calgary); and,
 - (ix) Free Press (Winnipeg)
4. Class Counsel and Defendants' Counsel will mail or email a copy of the Notice of Settlement Approval Hearing to any lawyer who they know represents a person who has not validly

opted out of this proceeding, and who claims to have been implanted with an ASR Implant System or any other person they know claiming to have been implanted with an ASR Implant System.

5. Class Counsel shall request from plaintiffs' counsel in the class proceedings in British Columbia and Québec the names of any individuals that are known to counsel in those proceedings to be Members of the ASR Class in this proceeding, and shall send a copy of the Notice of Approval Hearing by mail or email to all such class members.

6. Class Counsel shall include the Notice of Approval Hearing with a press release to be issued to Canada Newswire (in English). The Defendants shall be entitled to review and approve any final proposed press release prior to publication.

SCHEDULE F

SCHEDULE F -PLAN FOR DISSEMINATION OF NOTICE APPROVING SETTLEMENT

The **Notice of the Order Approving the Settlement** (the “Approval Notice”) shall be disseminated by the following means:

1. Class Counsel shall send copies of the Approval Notice by mail or email to all Class Members who have provided contact information to Class Counsel for the purposes of this action, including without limitation, any Class Members who timely and validly delivered written submissions regarding the Settlement pursuant to the Notice of Settlement Approval Hearing.
2. Class Counsel shall send a copy of the Approval Notice by mail or email to all Class Members previously identified by plaintiffs’ counsel in the class proceedings in British Columbia and Québec.
3. Class Counsel shall post copies of the Approval Notice to their respective websites, and the website of the Claims Administrator, if any.
4. Class Counsel shall arrange for publication of the Approval Notice in English unless otherwise noted in the following Canadian publications (single insertion, ¼ panel or equivalent for digital editions where indicated), with such publication to occur as soon as reasonably feasible following the Order Approving Settlement and the occurrence of the Effective Date under the Settlement Agreement:
 - (a) published once in The Globe and Mail (National Edition).
 - (b) published once in each of the following newspapers:
 - (i) Star (Toronto)
 - (ii) Ottawa Citizen (digital edition)
 - (iii) Spectator (Hamilton) (paper and digital editions)
 - (iv) Le Journal de Montréal (French digital edition)
 - (v) Chronicle (Halifax)
 - (vi) Journal (Edmonton)

- (vii) Leader Post (Regina)
- (viii) Herald (Calgary); and,
- (ix) Free Press (Winnipeg)

5. Class Counsel and Defendants' Counsel will mail or email a copy of the Approval Notice to any lawyer who they know represents a person who has not validly opted out of this proceeding, and who claims to have been implanted with an ASR Implant System or any other person they know claiming to have been implanted with an ASR Implant System.

6. Class Counsel shall include the Approval Notice with a press release to be issued to Canada Newswire (in English). The Defendants shall be entitled to review and approve any final proposed press release prior to publication.