



No. VLC-S-S-116652
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THEODORE WILSON

Plaintiff

AND:

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

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)
JUSTICE BRANCH) 26/February/2021
)
)

THE APPLICATION OF the representative Plaintiff for class certification and approval of the settlement of this action pursuant to s.35 of the *Class Proceedings Act*, in accordance with the terms of the Amended Settlement Agreement was heard this day in Vancouver, British Columbia.

UPON READING the representative Plaintiff's application record, and upon hearing the submissions of counsel for the representative Plaintiff Theodore Wilson, and counsel for the Defendants, DePuy International LTD., DePuy Orthopaedics, Inc., DePuy, Inc., and Johnson & Johnson, and upon being advised that the parties consent to this order,

THIS COURT ORDERS AND DECLARES that:

Amended Settlement Agreement

1. The definitions set out in the Amended Settlement Agreement, which is attached as Schedule "A", apply to and are incorporated into this Order

Opting Out or In

2. Any BC Resident Opt-Out Subclass Member may opt out of the class and settlement by providing to the Claims Administrator, a written request to be excluded from the BC Class by pre-paid mail, courier, fax, or email to the Claims Administrator no later than 60 days following the first publication date of the Notice of Certification and Settlement Approval in one of the BC publications identified on Schedule H (the "Opt-Out Deadline").

3. A member of the BC Resident Opt-Out Subclass who wishes to opt out of the BC Class and the Settlement shall state in his/her written request:

1. The full name, current mailing address, fax number, telephone number, and email address of the person who is opting out;
2. A declaration that the person believes he or she is a member of the BC Class and a member of the BC Resident Opt-Out Subclass and the reason for that belief including, if available, the reference/catalogue and lot numbers of his/her Qualified Device;
3. The statement "I hereby request to be excluded from the BC Class";
4. The person's signature and printed name following the request to be excluded from the BC Class.

4. Opt-Out requests must be received by the deadline. Further, an opt-out from a member of the BC Resident Opt-Out Subclass will be revoked if that BC Resident Opt-Out Subclass member later submits to the Claims Administrator a completed and executed Claim Form and Claimant's Declaration prior to the Claim Deadline established by the BC Court.

5. The Opt-In Form for Non-BC Residents to opt in to the Non-BC Resident Opt-In Subclass is approved in substantially the form attached as Schedule "J".

6. The Claims Administrator will provide to the Defendants and Class Counsel copies of all opt-in forms and opt-out statements received by the Claims Administrator within seven (7) days of receipt.

Settlement Approval

7. The settlement of this action, as set out in the Amended Settlement Agreement, is fair and reasonable and in the best interests of the BC Class Members, including the BC Resident Opt- Out Subclass and the Non-BC Resident Opt-In Subclass, and is hereby approved.
8. The Defendants shall pay the amounts required under the Settlement Agreement subject to the rights of termination in Section 9 of the Settlement Agreement.

Notice and Notice Plan

9. The form and content of the Notice of Class Certification and Settlement Approval shall be substantially in the form which appears at Schedule “F” to the Amended Settlement Agreement.
10. The Class Members shall be given notice of this order in accordance with the plan attached as Schedule “H” to the Amended Settlement Agreement.
11. The notification plan described in paragraphs 9 to 10 above of this Order satisfies the requirements of s. 19 of the *Class Proceedings Act*.

Claims Administrator

12. Epiq Class Action Services Canada Inc. is appointed the Claims Administrator.

Class Release and Dismissal

13. The Settlement Agreement and this Order are binding upon each Class Member, including each BC Resident Opt-Out Subclass member and Non-BC Resident Opt-In Subclass member, whether or not such person receives or claims compensation, including persons who are minors or are mentally incapable.
14. Upon the Effective Date, the Released Persons are forever and absolutely released 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 other comparable provincial legislation and any amendments thereto, the common law, Quebec 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.
15. This Court shall have continuing jurisdiction over the implementation and enforcement of the Settlement Agreement.

16. This action is dismissed without costs and with prejudice.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND
CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS
BEING BY CONSENT:



Signature of Douglas Lennox
 party lawyers for Plaintiffs



Signature of Robin Reinertson
 party lawyers for the Defendants

By the Court.

Registrar

SCHEDULE A

Court File No. VLC-S-S-116652
Vancouver Registry

In The Supreme Court of British Columbia

BETWEEN

THEODORE WILSON,

Plaintiff

and

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

Defendants.

Brought under the Class Proceedings Act, R.S.B.C. 1996, c.50

AMENDED SETTLEMENT AGREEMENT
Original Settlement Agreement Made as of 5 April 2018

AMENDMENTS MADE as of 9 February 2021

DEPUY BC ASR CLASS SETTLEMENT

RECITALS

- A. WHEREAS the Plaintiff commenced Action No. S-116652 in the Supreme Court of British Columbia, Vancouver Registry, alleging that the Defendants marketed a defective hip implant known as the ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System and seeking a class of persons resident in British Columbia and elsewhere in Canada (“BC Proceeding”);
- B. WHEREAS the Defendants deny liability in respect of the claims alleged in the BC Proceeding, and believe that they have good and reasonable defences in respect of the merits in the BC Proceeding;
- C. WHEREAS the Defendants assert that they would actively pursue these defences in respect of the merits at trial if the Plaintiff continued the BC Proceeding against them;
- D. 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 Plaintiff on his own behalf and putatively on behalf of other residents of British Columbia and all persons who previously were members of the Ontario ASR Class Action but who opted out of the Ontario ASR Class Action and who affirmatively opt in to this BC ASR Class Action;
- E. WHEREAS counsel for the Defendants and counsel for the Plaintiff have engaged in extensive arm’s-length settlement discussions and negotiations in respect of this Settlement Agreement;
- F. WHEREAS as a result of these settlement discussions and negotiations, the Defendants and the Plaintiff 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 British Columbia Court;
- G. WHEREAS the Plaintiff has agreed to accept this Settlement, in part, because of the monetary payments to be provided under this Settlement Agreement, as well as the attendant risks of litigation in light of the potential defences that may be asserted by the Defendants;
- H. WHEREAS the Defendants do not admit through execution of this Settlement Agreement any of the conduct alleged in the BC Proceeding or any other proceedings or any liability to Plaintiffs or to anyone;
- I. WHEREAS the Plaintiff, putative 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 Plaintiff’s or anyone else’s allegations against the Defendants;

- J. WHEREAS the Plaintiff and his 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 Plaintiff, and having regard to the burdens and expense in prosecuting the BC Proceeding, including the risks and uncertainties associated with trials and appeals, the Plaintiff and his counsel have concluded that this Settlement Agreement is fair, reasonable, and in the best interests of the Plaintiff and the putative Class he seeks to represent;
- K. WHEREAS the Defendants are entering into this Settlement Agreement in order to achieve a final resolution of all claims asserted in respect of the BC ASR Class (as defined herein) in the BC Proceeding or that could have been asserted against them in the Plaintiff in the BC Proceeding, and to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation;
- L. WHEREAS the Parties therefore wish to, and hereby do, finally resolve, without admission of liability, the BC Proceeding against the Defendants;
- M. WHEREAS Defendants will consent to the certification of a class action in this BC Proceeding consisting of the BC Class (as defined below) for settlement purposes only, whereby there will be (i) a subclass of Class Members resident in British Columbia, each of whom must opt out of the BC Class to not be bound by the settlement and dismissal, and (ii) a subclass of all persons who previously were members of the Ontario ASR Class Action but who opted out of the Ontario ASR Class Action and who affirmatively opt in to this BC ASR Class Action pursuant to s. 16(2) of the BC Class Proceedings Act, as their exclusive remedy for their claims against Defendants involving the ASR Implants; and
- N. WHEREAS for the purposes of settlement only and contingent on orders by the Courts as provided for in this Settlement Agreement, the Plaintiff has consented to a dismissal of the BC Proceeding against the Released Persons, as that term is defined in Section 1 below, and the release of all Released Claims, as that term is defined in Section 1 below, that have been or could have been asserted against Released Persons.
- O. WHEREAS the Parties signed the original settlement agreement in this matter with an Execution Date of April 5, 2018 (the “Original Agreement”).
- P. WHEREAS, by order of Justice Branch of the Supreme Court of British Columbia, dated July 16, 2018 (the “Certification Order”), this action was certified as a class proceeding on behalf of the following class, referred to as the BC ASR Class or BC Class:
- (a) BC Resident Opt-Out Subclass: all persons resident in British Columbia who underwent the surgical implantation of the ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System in a surgery occurring in Canada (“ASR Index Surgery”).

- (b) Non-BC Resident Opt-In Subclass: all persons who previously were members of the Ontario ASR Class Action but who opted out of the Ontario ASR Class Action and who affirmatively opt in to this BC ASR Class Action.
- (c) All residents of Canada asserting the right to sue the Defendants independently or derivatively by reason of their familial relationship to a Class Member under either the common law of Family Compensation Act applicable to the BC Resident Opt-Out Subclass, or for Non-BC Resident Opt-In Subclass members, those defined pursuant to section 61(1) of the Family Law Act, R.S.O. 1990, c. F.3 ;as amended (or any similar legislation in any of the Canadian provinces and territories or the Civil Law of Quebec).

- Q. WHEREAS, pursuant to the Certification Order the Plaintiff was appointed as the Representative Plaintiff for the BC Class and Klein Lawyers LLP was appointed as Class Counsel.
- R. WHEREAS, the Original Agreement was not approved pursuant to the Certification Order but the Parties were given leave to seek approval of an amended Settlement Agreement.
- S. WHEREAS, pursuant to the Certification Order, the manner of and time for members of the BC Resident Opt-Out Subclass and the Non-BC Resident Opt-In Subclass to opt-out of and opt-in to this proceeding is to be determined by further order of the Court.
- T. WHEREAS, pursuant to the Certification Order, the form and content and manner of the dissemination of the Notice to the BC ASR Class is to be determined by further order of the Court
- U. WHEREAS, the Parties have now concluded this Amended Settlement Agreement consistent with the Certification Order.

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 BC Proceeding be settled and dismissed on the merits with prejudice to the Releasing Persons, on the following terms and conditions, which amend and supersede any earlier terms, conditions and agreements between the Parties:

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 Claims Administrator at a Schedule 1 Canadian chartered bank. Any interest accrued will be utilized to defray Notice and Administration Costs.
- (2) Appeal Adjudicator means the independent person selected by the agreement of Class Counsel and Defendants and identified herein to oversee the Settlement Administration process

and make final and non-appealable decisions with respect to the adjudication of any claim decisions of the Claims Administrator that are subject to appeal pursuant to the claim processing provisions of this Agreement.

- (3) Approval Hearings means the hearings on the motions before the BC Court for the certification of the BC Class for settlement purposes and the approval of the Settlement Agreement and notice approvals.
- (4) Approval Order(s) means the order(s) made by the Court in this Proceeding certifying the BC ASR Class, approving this Amended Settlement Agreement, and the notices required with respect to the class certification and settlement. Certification was granted by the Certification Order, which further granted leave to seek approval of an amended Settlement Agreement. The Parties will be seeking approval of this Amended Settlement Agreement by means of a further order.
- (5) Approved Claimant means a member of the BC Class (including any Derivative Spouse) who is an Eligible Claimant and who has submitted the required documentation and whose claim has been approved for payment by the Claims Administrator.
- (6) 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.
- (7) ASR Index Surgery means the first surgical implantation of the ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System in a surgery on that hip occurring in Canada.
- (8) ASR Revision Surgery means 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:
 - (1) the revision surgery must have taken place prior to the Last Eligible Date;
 - (2) 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 (however, DePuy may waive the 180-day requirement in its sole discretion);
 - (3) the revision surgery is not an “Excluded Trauma-Related Revision”;
 - (4) the revision surgery is not an “Excluded ASR Resurfacing and Hemiarthroplasty Revision”; and
 - (5) for revision surgeries occurring after 1 January 2018, the revision surgery must occur in Canada.

- (9) BC ASR Class or BC Class means:
- (a) BC Resident Opt-Out Subclass: all persons resident in British Columbia who underwent the surgical implantation of the ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System in a surgery occurring in Canada (“ASR Index Surgery”).
 - (b) Non-BC Resident Opt-In Subclass: all persons who previously were members of the Ontario ASR Class Action but who opted out of the Ontario ASR Class Action and who affirmatively opt in to this BC ASR Class Action.
 - (c) All residents of Canada asserting the right to sue the Defendants independently or derivatively by reason of their familial relationship to a Class Member under either the common law of Family Compensation Act applicable to the BC Resident Opt-Out Subclass, or for Non-BC Resident Opt-In Subclass members, those defined pursuant to section 61(1) of the Family Law Act, R.S.O. 1990, c. F.3 ;as amended (or any similar legislation in any of the Canadian provinces and territories or the Civil Law of Quebec).

The BC ASR Class does not apply to any other DePuy Hip System.

- (10) BC ASR Settlement Program means the claims process and settlement awards available for qualifying Eligible Claimants that are members of the BC ASR Class, which is established by the terms of this Settlement Agreement, subject to Final Approval and the Effective Date.
- (11) BC Resident Opt-Out Subclass means members of the BC Class who are residents of British Columbia who are bound by this settlement and dismissal order unless they timely file a request for exclusion from the BC Class (“opt-out”) in accordance with the order of the BC Court and do not later revoke their opt-out by filing a timely Claim Form with the Claim Administrator.
- (12) Bilateral Revision means a bilateral ASR Revision Surgery performed on both hips of a member of the BC Class that was performed in either one or two surgical procedures.
- (13) Canadian Patient means Canadian citizens or legal residents who underwent an ASR Index Surgery in Canada. This agreement specifically excludes foreign citizens or patients who had DePuy ASR implant surgery in foreign countries. This agreement does not cover DePuy ASR products implanted outside of Canada.
- (14) Claim Form means the form and declaration attached as Schedule A.
- (15) Claims Administrator means Crawford Class Action Services, the entity selected by the agreement of Class Counsel and Defendants to administer the BC ASR Settlement Program, including but not limited to disseminating the Notices, administering the BC ASR Settlement Program to receive, review and evaluate claims, render settlement awards or deny claims, facilitate the appeal process and process the payment of final settlement awards.

- (16) Claims Amount means the amounts to which an Approved Claimant is entitled following the application of all reductions according to the terms of this Settlement Agreement.
- (17) 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. The Claims Period deadline is applicable to Class Members who are Eligible Claimants making a claim about an ASR Revision Surgery that occurred before the Last Eligible Date.
- (18) Class Counsel means Klein Lawyers, LLP, which is putative Class Counsel prior to certification of the BC Class for settlement purposes and Class Counsel following certification by the BC Court.
- (19) Class Counsel Fees means all Fees approved by the Court as payable pursuant to Section 10 hereof.
- (20) Class or Class Members means, for purposes of this settlement, all members of the BC Class who are (i) members of the BC Resident Opt-Out Subclass who do not timely opt out of the BC Class, or (ii) members of the Non-BC Resident Opt-In Subclass who timely opted in to the BC Class.
- (21) Complication means the medical conditions and/or Extraordinary Income Loss identified in Schedule I that occurred as a result of an ASR Revision Surgery.
- (22) 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 the ASR or ASR XL cup, including but not limited to the femoral stem.
- (23) 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.
- (24) Costs of the Notice Program means all third-party costs associated with the publication of the Notice of Class Proceeding and Approval Hearing and the Notice of Certification and Settlement Approval.
- (25) Court means the Supreme Court of British Columbia handling the BC Proceeding.
- (26) Defendants mean DePuy International Ltd., DePuy Orthopaedics Inc., DePuy, Inc., and Johnson & Johnson.
- (27) Defendants' Counsel means Blake, Cassels & Graydon LLP.
- (28) Derivative Claimant(s) means all residents of Canada asserting the right to sue the Defendants independently or derivatively by reason of their familial relationship to a Class Member.
- (29) Disbursements means funds paid out by Class Counsel in connection with the BC Proceeding.

(30) Effective Date means the latest date on which any of the Final Orders in British Columbia take effect without the possibility of further appeal with respect to the approval of this Amended Settlement Agreement.

(31) Eligible Claims means claims meeting the eligibility criteria set out in Section 4.

(32) Eligible Claimant means a member of the BC Class (either as a member of the BC Resident Opt-Out Subclass or Non-BC Resident Opt-In Subclass) who (a) was a Canadian Patient, (b) underwent an ASR Index Surgery, and (c) underwent an ASR Revision Surgery. 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, exclusions and reductions 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 (as defined below) are not Eligible Claimants. The Defendants, in their sole and absolute discretion, may irrevocably waive one or more criteria referenced above and deem a BC Class Member to be an Eligible Claimant by so informing the Claims Administrator in writing.

(33) 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.

(34) Excluded Trauma-Related Revision Surgery means 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, 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 the Canadian Program, 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 Claims Administrator, 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 Claims Administrator in accordance with the standards in this paragraph whose decision will be final and Non-Appealable.

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

(36) Extraordinary Income Loss means an amount in excess of 20% of the aggregate annual income for the two years preceding the ASR Index Surgery of an Approved Claimant under the age of 65 up to a maximum of \$10,000 (CAD) where the loss was solely due to the Approved Claimant's ASR Revision Surgery and any resulting medical Complication and which is subject to the aggregate cap of \$40,000 (CAD) for all Complications as set forth on Schedule I.

(37) Final Approval Date means the later of (a) 31 days after the Court issues an Approval Order, and (b) the disposition of any and all appeals from the Approval Order.

(38) Final Order(s) means the final orders entered by the Court in respect of the certification of the BC ASR Class for settlement purposes and the approval of this Amended 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 class certification and approval of this Amended Settlement Agreement upon a final disposition of all appeals.

(39) Initial Deposit means the sum of \$25,000 (CAD) paid by the Defendants into the Account.

(40) Last Eligible Date means August 24, 2020.

(41) Non-BC Resident Opt-In Subclass means all persons who previously were members of the Ontario ASR Class Action but who opted out of the Ontario ASR Class Action and who timely opt in to the BC Class and this Settlement by executing and submitting an Opt-In Form (Schedule J) and thus become bound by this Settlement and the dismissal order of the BC Court.

(42) Notice and Administration Costs means all fees, costs, PST, GST and HST taxes, and any other amounts incurred for the approval, implementation and operation of this Settlement Agreement, including the Costs of the Notice Program, the costs of translation of the notice and the fees and expenses of the Claims Administrator and Appeal Adjudicators, but excluding Class Counsel Fees and Disbursements and the costs to complete and file a claim under this Settlement.

(43) Notice of Class Proceeding and Approval Hearing means the form of notice agreed to by the Plaintiff and the Defendants, as set forth in the attachment to Schedule B, or such other form as may be approved by the BC Court that informs the Class of the date and location of an Approval Hearing, the principal elements of this Settlement Agreement, and the process by which Class Members may object to the Settlement or opt-out of the BC ASR Class.

(44) Notice of Certification and Settlement Approval means the form of notice, agreed to by the Plaintiff and the Defendants, as set forth in Schedule F, or such other form as may be approved by the BC Court that informs the BC Class of the approval of this Settlement

Agreement and the process by which (1) a member of the BC Resident Opt-Out Subclass may Opt Out and (2) for the Non-BC Residents, the process by which they may Opt In to the BC Class.

(45) Notices means (i) the Notice of Class Proceeding and Approval Hearing and (ii) the Notice of Certification and Settlement Approval.

(46) Ontario ASR Class Action means *Joseph Charles Crisante, Katherine Crisante, Lynne Slotek, and Larry Slotek v. DePuy Orthopaedics Inc., DePuy International Limited, DePuy Inc. and Johnson & Johnson Inc.*, Court File No. CV-10-415755-00CP, Superior Court of Justice, Province of Ontario.

(47) Ontario/Quebec Class Action Settlement Agreement means any final written settlement agreement signed by Defendants and all required Plaintiffs' Counsel signatories in either or both of the Ontario ASR Class Action and/or the Quebec ASR Class Action providing a settlement on a class-wide basis before April 5, 2019 even though the Ontario/Quebec Class Action Settlement Agreement may still require court approval. By "class-wide basis" what is meant is that this provision applies to a settlement in those jurisdictions which is subject to court approval under applicable provincial class action legislation as a class action settlement and that this provision does not apply to a settlement in the provinces of Ontario or Quebec that is made outside of applicable class action legislation, such as the settlement of an individual lawsuit.

(48) Opt-In means a member of the BC Class who is a member of the Non-BC Resident Opt-In Subclass who timely opts in to this Settlement by timely filing with the Claims Administrator an Opt-In Form. For clarity, members of the Quebec ASR Class and the Ontario ASR Class cannot opt-in to the BC Class or this settlement. Only those individuals who opted out of the Ontario ASR Class can opt in to the BC Class.

(49) Opt-Out means a person who is otherwise a member of the BC Resident Opt-Out Subclass who timely and validly excludes his or herself from the BC Class and this Settlement pursuant to the procedure set forth in the Court approved notice and who does not revoke his or her opt out by later timely filing a Claims Form with the Claims Administrator.

(50) Parties means the parties to this Settlement Agreement, including Plaintiff, putative Class Counsel, and the Defendants.

(51) Physician Declaration means the declaration attached at Schedule D, which must be completed by an Eligible Claimant's treating physician and 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, but which did not occur until after the Last Eligible Date but before the expiration of the Claims Period, or (ii) a claim for a medical Complication under Schedule I with respect to a claim for Complication for blood clot, infection or permanent peroneal nerve damage. All other product and medical requirements are to be demonstrated by Contemporaneous Medical/Hospital Records submitted as part of a claim under this settlement.

(52) Plaintiffs means the Plaintiff, the members of the BC ASR Class who do not timely opt out, and any Opt-Ins.

(53) Provincial Health Insurers means all provincial and territorial Ministries of Health or equivalents, Provincial and Territorial Governments and/or provincial and territorial plans funding medical services throughout Canada.

(54) Qualified Device means the ASR™ XL Acetabular Hip System and/or ASR™ Hip Resurfacing System and any and all Component and Ancillary Parts.

(55) Quebec ASR Class Action means the case of *Alan Dick v. Johnson & Johnson Inc. and DePuy Orthopaedics Inc.*, No. 500-06-000550-109, Superior Court, Province of Quebec, District of Montreal..

(56) Released Claims means 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 ASR Implant System or their design, development, manufacture, formulation, testing, distribution, marketing, labeling, regulatory submissions, advertising, prescription, purchase, sale, implantation, use, removal, or revision and include, without limitation, all claims for damages or remedies of whatever kind or character, known or unknown, that are now recognized by law or that may be created or recognized in the future by statute, regulation, judicial decision, administrative adjudication, or in any other manner for;

- (a) 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;
- (b) loss of wages, income, earnings or earning capacity, medical expenses, doctor, hospital surgical, nursing and drug bills (also subject to a separate agreement with the Provincial Health Insurers);
- (c) loss of support, services, consortium, companionship, society or affection, or damage to familial relations;
- (d) wrongful death and survival actions;
- (e) medical screening or monitoring, injunctive, declaratory or equitable relief;
- (f) 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;
- (g) compensatory damages, punitive or exemplary damages, statutory and other multiple damages or penalties of any kind;
- (h) economic or business losses, diminished value or lost benefit-of-the-bargain;
- (i) attorney's fees, costs, court, litigation or other expenses; and/or
- (j) prejudgment or post-judgment interest.

(57) Released Persons means

- (a) The Defendants and each of their 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 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.

(58) Releasing Persons means all members of the BC Class, including (i) all BC Resident Opt-Out Subclass members who do not timely opt out of the BC Class or who revoke their opt-out by later timely filing a Claim Form, (ii) all Non-BC Resident Opt-In Subclass members who become Opt-Ins by timely executing and submitting an Opt-In Form as set forth at Schedule J, and (iii) all Derivative Claimants and each of the successors, heirs, estates, administrators, trustees and assigns of those persons identified above.

(59) Settlement Agreement or Settlement means this Amended Settlement Agreement, including the Recitals and Schedules hereto.

(60) Settlement Amount means the aggregate amount payable by the Defendants pursuant to Section 4.

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

(62) Subrogation Agreement means the separate agreement(s) between the Defendants and Provincial Health Insurer(s) in which the Defendants have agreed to pay the subrogated claims of the Provincial Health Insurers arising from medical services provided in relation to the ASR Implant System.

- (63) Subsequent Deposit means further amounts paid by the Defendants into the Account.
- (64) 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.
- (65) Unrevised means any BC resident who has not undergone surgery to replace the cup of a Qualified Device.

SECTION 2 – CALCULATION OF DEADLINES AND CONDITION PRECEDENT

- (i) If any deadline identified in the Settlement Agreement falls on a weekend or Canadian national holiday, the deadline shall occur on the following weekday that is not a 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 BC Court certifies the BC ASR Class and approves this Settlement Agreement, 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 the prompt, complete and final dismissal with prejudice of the Proceedings against the Defendants and the Release in favor of the Released Persons.

3.2 Motion Approving Notices

At times mutually agreed to by the Parties after the Settlement Agreement is executed, the BC Plaintiff shall bring an application before the BC Court for an order in the form of Schedule B approving (i) the Notice of Class Proceeding and Approval Hearing of an application for an order (a) certifying the BC Class and subclasses for settlement purposes and (b) approving this Settlement Agreement, and (ii) a proposed Notice of Class Certification and Settlement Approval.

3.3 Motion for Conditional Certification of Class and Approval of Settlement

The BC Plaintiff shall file an application in the BC Court for an order certifying the BC Class and subclasses for settlement purposes only and approving this Settlement Agreement. The order shall be generally in accordance with the form attached at Schedule C.

3.4 Effect of Court's Certification and Approval Order

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

- (1) Describe the group as all persons who are members of the BC ASR Class and the BC Resident Opt-Out Subclass and the Non-BC Resident Opt-In Subclass and certify the class and subclasses for settlement purposes only;
- (2) Appoint the representatives of the BC Class and subclasses, if required;
- (3) Order publication of the Notice of Class Certification and Approval Hearing as well as the form, contents and method of its dissemination, which shall include directions and deadlines for opting out of the BC Resident Opt-Out Subclass and opting into the Non-BC Resident Opt-In Subclass;
- (4) Approve this Agreement and order the Parties and all members of the BC ASR Class to comply with it;
- (5) Declare that this Agreement is reasonable, fair, adequate and in the best interest of the Class;
- (6) Confirm the appointment of the Claims Administrator;
- (7) Enter such other orders as are needed to effectuate the terms of the Settlement Agreement; and
- (8) Enjoin all members of the BC Class (other than those who validly opted out of the BC Class), including Opt-Ins, from asserting and/or continuing to prosecute claims against Defendants or any other Released Person, as well as any Released Claim that such Class Member has, had or may have in the future and enjoining members of the Non-BC Resident Opt-In Subclass from obtaining any monies or other remedies in the Ontario or Quebec proceeding.

3.5 Publication of Notice of Class Certification and Approval Hearing

Before the Settlement Agreement has been approved by the BC Court and the Class has been authorized pursuant to the Settlement Agreement, Class Counsel shall disseminate the Notice of Class Proceeding and Approval Hearing to the Class. The Defendants will pay the cost of this dissemination irrespective of whether or not the Settlement Agreement is approved. This notice will provide an opportunity for potential Class Members to object to the terms of the Settlement.

3.6 Publication of Notice of Class Certification and Settlement Approval

After the BC Class and its subclasses have been certified by the BC Court and this Settlement Agreement has been approved by the BC Court, Class Counsel shall disseminate the Notice of Class Certification and Settlement Approval to the BC Class. This notice will provide an opportunity for BC Resident Opt-Out Subclass members to opt out of the BC Class and Settlement and an opportunity for Non-BC Resident Opt-In Subclass Members to opt in to the BC Class and Settlement. Pursuant to Defendants' obligations in Section 4.9, Defendants will pay the cost of dissemination.

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 Payment of the Settlement Amount

(i) Conditional upon the approval of this Settlement Agreement as provided herein and the dismissal of the BC Proceeding with prejudice and, as applicable, the release of the claims of members of the BC Class, Defendants agree to pay, or cause to be paid, (i) the Settlement Awards on a per Eligible Claimant basis on a claims-approval basis to the Account for disbursement by the Claims Administrator, provided (a) the Final Approval Date has passed, and (b) the Settlement Award is final and non-appealable within the BC ASR Settlement Program; and (ii) Notice and Administration Costs.

(ii) The Parties understand and agree that the Defendants 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 BC Class by reason of the use or alleged misuse of any of the Settlement Amount or of an erroneous disbursement or other action taken or failure to act with respect to any of the Settlement Amount.

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

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

(2) he or she proves entitlement to recovery under this Settlement Agreement pursuant to the terms and documentation requirements of this Settlement Agreement.

(iv) Only members of the BC Class who have submitted all necessary information and documentation to the Claims Administrator within the Claims Period, proving they are an Eligible Claimant entitled to receive compensation under the Settlement Agreement, shall receive compensation under the Settlement Agreement. For all claimants, “necessary information” includes a completed Claimant Declaration (Schedule A) and the information and documents described in Section 4, paragraph 4.4(2). As described below and in the Claimant Declaration, certain claimants will also be required to submit a completed Physician’s Declaration (Schedule D).

(v) The amount of recovery for any Eligible Claimant under Sections 4.2 (iii) and (iv) above shall be established according to the patient’s status as of the date the Claim Form of the Class Member is initially filed with the Claims Administrator, subject to any additional claim filed under Section 13. If a Class Member

has scheduled, but not undergone, an ASR Revision Surgery before the Last Eligible Date, he or she will be eligible to receive the compensation available to Approved Claimants who underwent an ASR Revision Surgery under this Settlement Agreement, so long as the Class Member's ASR Revision Surgery occurs before expiration of the Claims Period, and the Class Member submits a Physician's Declaration that provides confirmation of, and information relating to, the scheduling of the ASR Revision Surgery by the Last Eligible Date and the occurrence of the ASR Revision Surgery before the expiration of the Claims Period.

(vi) If a person who would otherwise be a member of the BC Resident Opt-Out Subclass indicated that he or she did not want to be part of the BC Class by opting out of the BC Class later submits a Claim Form and Claimant Declaration under this Settlement Agreement prior to the expiration of the Claims Period, the opt-out shall be deemed revoked, and such person will be deemed to be a Class Member and member of the BC Resident Opt-Out Subclass, as determined by the Claims Administrator. However, this change in status does not impact Defendants' right of termination under Section 8.1(e).

(vii) 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.

(viii) The Defendants agree to pay amounts in accordance with this Settlement Agreement, in full satisfaction of all of the Released Claims against the Released Persons, contingent on dismissal of the claims of the certified class in the BC Proceeding and the individual claims of any Opt-Ins in actions outside the BC Proceeding.

(ix) The members of the BC ASR Class, including Opt-Ins, who are Eligible Claimants who become Approved Claimants shall be compensated as follows ("Settlement Awards"), subject to reduction as set forth in this Settlement Agreement, including section 4.3, and less their respective share of any Class Counsel Fees that the Court may award to Class Counsel in accordance with Section 9:

(1) Subject to paragraphs (5), (6), (7), and (8) of this Section, Class Members, including Opt-Ins, who have undergone a Single Revision each receive \$100,000 (CAD).

(2) Subject to paragraphs (5), (6), (7), and (8) of this Section, Class Members, including Opt-Ins, who have undergone Bilateral Revision each receive \$120,000 (CAD).

(3) Subject to paragraphs (5), (6), (7), and (8) of this Section, Class Members, including Opt-Ins, who have undergone either a Single Revision or a Bilateral Revision and who have experienced a Complication, including Extraordinary Income Loss, will receive additional funds in the

aggregate up to \$40,000 (CAD). The Extraordinary Income Loss recovery is further limited to up to \$10,000 (CAD) and subject to the aggregate Complication cap of \$40,000 (CAD). The amount to which a Class Member or Opt-In may be entitled for a Complication, including Extraordinary Income Loss, sustained (subject to the aggregate cap of \$40,000) is identified in Schedule I.

(4) Subject to paragraphs (5), (6), (7), and (8) of this Section, Class Members, including Opt-Ins, who have undergone either a Single Revision or a Bilateral Revision and who purchased the Qualified Device implanted in their ASR Index Surgery with their own funds and were not reimbursed by insurance or any third party, will be reimbursed for 50% of the cost of the device upon submission of proof by contemporaneous documents of the purchase and purchase price, provided the lack of reimbursement is attested to by the Class Member in the Claim Form. The Claims Administrator will be responsible for determining and subtracting any Class Counsel Fees from these amounts.

(5) Any payment to a Class Member who underwent either a Single Revision or Bilateral Revision and becomes an Approved Claimant is subject to the reductions set forth in this Settlement Agreement.

(6) Class Members who underwent a revision surgery for a purpose other than explanting the cup of a Qualified Device are not entitled to the compensation provided in paragraphs (1), (2), (3), and (4) of this Section in relation to that surgery.

(7) Class Members who underwent a revision surgery that was not medically necessary are not entitled to the compensation provided in paragraphs (1), (2), (3), and (4) of this Section in relation to that surgery.

(8) 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 the compensation provided in paragraphs (1), (2), (3), or (4) of this Section.

(x) A Derivative Claimant who is a spouse of an Approved Claimant and who lived with the Approved Claimant both at the time of the ASR Index Surgery and at the time of the ASR Revision Surgery shall be entitled to \$5,000 (CAD), less counsel fees, provided the Approved Claimant of the Derivative Claimant will be receiving a Settlement Award (with or without reductions) under this Settlement and he or she executes and submits the required documentation.

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

(xii) The Claims Administrator 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 and Class Counsel.

(xiii) Notwithstanding any other terms of this Agreement, the rights of Provincial Health Insurers are not compromised or released as a result of this Settlement Agreement alone. Further, the consent of the BC Provincial Health Insurers to this Settlement Agreement shall be provided to the BC Court in advance of the Settlement Approval Hearing. Non-BC Resident Opt-Ins shall later provide a consent to the settlement of their individual claims from their respective provincial health insurers, if that respective provincial health insurer has not yet filed a consent to the entire settlement agreement. In no circumstance shall a Class Member be required to pay the subrogated claim of their respective provincial health insurer(s) out of their Claim Settlement Amounts.

(xiv) For any individuals who are members of both the *Crisante* Ontario ASR Class Action and this *Wilson* British Columbia ASR Class Action and who are Eligible Claimants in this BC class action: the Ontario court will shortly be asked to approve a settlement in the *Crisante* Ontario class action. A person who is a member of both class actions will only obtain one recovery. They will need to seek settlement recovery from the *Crisante* Ontario ASR Class Settlement Program unless the *Crisante* Ontario ASR Class Settlement Program is not approved before the last payment has to be made under the *Wilson* British Columbia ASR Settlement Program.

4.3 Reductions to Settlement Payments

(i) The following reductions shall be applied to all Settlement Awards under section 4.2 (ix) to Approved Claimants prior to the calculation of any other reductions based on the length of time from the ASR Index Surgery to the ASR Revision Surgery (“Implantation Length”), and these reductions shall not be funded by Defendants but shall be retained by Defendants for Defendants’ benefit:

Implantation Length “X”	Amount of Reduction
5 Years \leq X < 6 Years	4%
6 Years \leq X < 7 Years	8%
7 Years \leq X < 8 Years	16%

8 Years \leq X < 9 Years	24%
9 Years \leq X <10 years	32%

(ii) The following reductions shall be applied to all Settlement Awards to Approved Claimants under section 4.2 (ix) due to age of the Approved Claimant at the time of the ASR Index Surgery, and these reductions shall not be funded by Defendants but shall be retained by Defendants for Defendants’ benefit:

<u>Age at ASR Index Surgery</u>	<u>Percent Reduction</u>
Age \geq 70	4%
Age \geq 75	8%
Age \geq 80	12%
Age \geq 85	15%

(iii) The amount of reductions to settlement awards shall be retained by Defendants. The amount of reductions to settlement awards shall be calculated and applied by the Claims Administrator prior to requesting payment for approved settlement awards from Defendants in the biweekly report set forth in Section 4.5(10).

4.4 Filing Claims in the BC ASR Settlement Program

(i) The purpose of the documentation requirements with respect to claimants’ entry into the BC ASR 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 BC ASR Settlement Program for a settlement award, one must be an Eligible Claimant and provide to the Claims Administrator, the following:

- (1) A completed Claims Form and Claimant’s Declaration (Schedule A);

(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) Income and tax records if Extraordinary Income Loss is one of the Complications claimed;

(5) A Physician's 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, and request a waiver from Defendants' Counsel, who will expeditiously respond to the waiver request. Such a waiver should not be unreasonably withheld if the submitted evidence shows that the implant surgery involved Qualifying Devices and the Eligible Claimant may make application to an Appeal Adjudicator if the waiver request is unreasonably delayed or unreasonably denied;

(iv) If certain Contemporaneous Medical/Hospital Records are unavailable to an Eligible Claimant, the Eligible Claimant may submit a Physician's 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, and the Claims Administrator may decide the claim based upon the Physician's Declaration and the available Contemporaneous Medical/Hospital Records.

(v) The deadline for filing claims in the BC ASR Settlement Program shall be 5:00 p.m. Vancouver time on the last day of the Claims Period, unless extended by written agreement of the Parties.

(vi) Enrollment in the BC ASR Settlement Program by Opt-Ins is irrevocable and only subject to the review and appeal procedures established as part of the BC ASR Settlement Program.

(vii) An Eligible Claimant who files a claim with the BC ASR Settlement Program and submits all the required documentation and meets all the necessary criteria to the satisfaction of the Claims Administrator, or any appeal protocol, becomes an Approved Claimant.

(viii) It is the responsibility of each claimant to submit all documentation necessary to support the claim or rebut any reductions.

4.5 Claims Handling and Settlement Payment Process

(i) The administration and processing of claims of the BC ASR Class and the payment of funds into and from the Account shall be conducted by or under the supervision of the Claims Administrator for members of the BC ASR Class.

(ii) The determination of Eligible Claims shall be made in accordance with Sections 4.2 and 4.4 and the Definitions of this Settlement Agreement. All Eligible Claims received by the Claims Administrator within the Claims Period shall be approved for payment from the Claims Amount (“Approved Claims”).

(iii) The Defendants have the right to examine the supporting documentation for any claim submitted to the Claims Administrator, and Defendants may at their option choose to submit in writing to the Claims Administrator, with a copy to Class Counsel, reasons they believe that a claim is ineligible or its supporting documentation is deficient. The Claims Administrator shall establish a central repository of information submitted by claimants, which shall be accessible for this purpose.

(iv) In order to recover under this Settlement Agreement, Class Members who are Eligible Claimants must hand-deliver, email, mail, or fax a properly executed Claimant Declaration in the form attached as Schedule A along with a Physician’s Declaration (if applicable) in the form attached as Schedule D such that they are received by the Claims Administrator no later than 5:00 p.m. Vancouver time on the last day of the Claims Period.

(v) In order to file a claim for a Complication or an Extraordinary Income Loss, Class Members who are Eligible Claimants must hand-deliver, email, mail, or fax a properly executed Claim Form in the form attached as Schedule A with the Sections on Complications and/or Extraordinary Income Loss properly filled out and all supporting documentation and Physician Declaration, if applicable, included such that it is received by the Claims Administrator no later than 5:00 p.m. Vancouver time on the last day of the Claims Period.

(vi) No later than 60 days from the date that the Claims Administrator receives a completed version of Schedule A to this Settlement Agreement from a Class Member, the Claims Administrator shall notify the Class Member about whether he or she is an Approved Claimant who will receive payment under this Settlement Agreement, and if the Class Member will not receive payment, the reason why the claim for compensation was rejected, in whole or in part.

(vii) If the Claims Administrator determines that the materials submitted by a Class Member are deficient, the Claims Administrator shall notify the Class Member in writing of the deficiency and shall provide the Class Member with 90 days to rectify the deficiency by delivering further or amended materials.

(viii) The Claims Administrator shall determine and certify, in its sole discretion, whether a claim for compensation under Schedule A to this Settlement Agreement has been properly made. The decision of the Claims Administrator regarding a Class Member's eligibility to recover under this Settlement Agreement shall be made according to the terms of this Agreement and shall be final and not subject to review. All other decisions made by the Claims Administrator in connection with an Eligible Claimant's recovery under this Settlement Agreement may be appealed by an Eligible Claimant, or Defendants within the time frame and by following the Appeal Protocol outlined in Schedule K. A Claims Administrator's decision will be deemed received 10 days after it is mailed to a Class Member.

(ix) All appeals will be decided by The Honourable Marion J. Allan (Appeal Adjudicator for BC Class Members and Opt-Ins) or such other person upon whom Class Counsel and Defendants' Counsel agree in writing, for decision based only on written submissions from the parties involved. All decisions rendered by The Honourable Marion J. Allan or such other person upon whom Class Counsel and counsel for Defendants agree in writing to be an Appeal Adjudicator shall be final and not subject to further review or appeal.

(x) On a biweekly basis, the Claims Administrator shall inform Defendants and Class Counsel in writing of the Approved Claimants (Class Members or Opt-Ins) whose claims for payment have been approved since the preceding biweekly report, if any, and the amount of each of their approved claim payments. Absent an error or omission in the report to be reported to the Claims Administrator, Defendants shall cause the aggregate amount of the approved claim payments set forth in the biweekly report to be deposited in the Account within 30 days. Class Counsel and the Defendants may agree in writing to more extended reporting periods by the Claims Administrator as necessary, but in all cases, Defendants shall make Subsequent Deposits into the Account for payment of Approved Claims within 30 days of notice by the Claims Administrator of the Approved Claims for which there is no error or omission. For example, after an initial batch of claims is processed following the Effective Date, claims activity may become more limited until the end of the Claims Period.

(xi) After approving a claim for payment made by a Class Member and after having received a deposit in the Account for the payment of the approved claim payment of that Approved Claimant, the Claims Administrator shall promptly pay the Approved Claimant or the Approved Claimant's legal representatives or counsel. However, payment under the Settlement Agreement shall not be made to an Approved Claimant until the Approved Claimant satisfies the requirements of Sections 4.2 and 4.4.

(xii) Within ten (10) Business days of the close of the Claims Period, the Claims Administrator shall provide to Defence Counsel and to Class Counsel a report of the Approved Claims received by the Claims Administrator.

(xiii) At the same time the Claims Administrator pays an Approved Claimant who is a Class Member, the Claims Administrator shall also remit

from the Account the Class Counsel Fees prescribed by Section 9 and any order of the BC Court to BC Class Counsel for Approved Claimants who are Class Members or their estate representatives.

(xiv) For each Approved Claimant, the Claims Administrator shall make a determination as to which Provincial Health Insurer(s), including primary or majority insurer if more than one, provided insured medical services to the Approved Claimant in respect to an ASR Revision Surgery(ies) and shall advise Class Counsel and the Defendants of its determination.

4.6 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 Court on motion brought by the Parties, or any of them.

4.7 Total Amounts Payable by the Released Persons

The Defendants agree to pay the Notice and Administrative Costs and the final and approved settlement awards of all Approved Claimants in settlement of all claims by the Releasing Persons against the Released Persons in respect of the Released Claims. 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 amounts agreed upon in this Settlement Agreement.

4.8 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 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, 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 prescription, sale, purchase, implantation, use, removal

and/or revision of ASR Implant Systems, other than those of the Provincial Health Insurers whose rights, remedies, and subrogated claims shall be resolved by separate agreement..

(iii) The Approval Order shall also provide that this Settlement is the exclusive remedy of any Opt-Ins and that any Opt-Ins shall not pursue any individual claim in or take or receive any amounts in connection with the Ontario ASR Class Action and/or the Quebec ASR Class Action and authorize the Claims Administrator to give the names of Opt-Ins to the Defendants so that they can monitor this.

4.9 Payment of Notice and Administration Costs

(i) Within 30 days of the Effective Date, the Defendants shall pay the Initial Deposit into the Account.

(ii) The Initial Deposit will be used for the payment of Notice and Administration Costs.

(iii) The Claims Administrator may draw upon the Account to pay the Notice and Administration Costs. In addition, the Account shall be used by the Claims Administrator to (a) receive Settlement Award payments from Defendants on a claims-qualifying basis, (b) make Settlement Award payments from the Account to or for the benefit of Approved Claimants, and (c) pay Class Counsel Fees and Disbursements or other counsel fees and disbursements owing under Sections 10.1(1) and (2) from the Account.

(iv) The Defendants shall make Subsequent Deposits in such amounts and at such times as necessary to pay the Notice and Administrative Costs, promptly, on an ongoing basis.

4.10 Appointment and Role of Claims Administrator

(i) The Parties will agree upon a Claims Administrator to be appointed by the BC Court for the purpose of administering the Settlement. The Claims Administrator shall be subject to removal by the BC Court for cause.

(ii) The Claims Administrator shall make a determination as to whether each Class Member who seeks payment under the Settlement Agreement is an Approved Claimant based on the documentation submitted before the expiration of the Claims Period to that Class Member. If such person is an Approved Claimant, the Claims Administrator shall determine the amount of funds due to the Approved Claimant under Section 4 and Schedule I.

(iii) The Claims Administrator shall sign and adhere to a confidentiality statement, in a form satisfactory to the Parties, by which it agrees to keep confidential any information concerning Class Members or Defendants. Further, the Claims Administrator shall institute and maintain procedures to ensure that the identity of

all Class Members and all information regarding any claims and submissions will be kept strictly confidential.

(iv) The Claims Administrator shall administer all monies payable under the Settlement Agreement, except as specifically provided for herein, and process all claims of Class Members in accordance with the terms of this Settlement Agreement.

(v) The Claims Administrator shall offer its services in both English and French.

(vi) The Claims Administrator shall report on a monthly basis to Class Counsel and Defendants' Counsel on the number of claims received in that month and the decisions made by it in respect of any claim, or on such other reporting interval as may be agreed in writing between Class Counsel and Defendants. Such reports will include the name of each Approved Claimant, the category and amount of each payment to be deposited into and made from the Account, and whether the claim relates to a BC Resident Opt-Out Subclass Member or a Non-BC Resident Opt-In Subclass Member.

(vii) The Claims Administrator shall retain all records relating to the claim of each Class Member, including Opt-Ins. Defendants' Counsel, Defendants, and the Released Persons, as well as their respective insurers, may, upon providing three days' written notice to Plaintiffs' Counsel, inspect the Claims Administrator's records. Any party inspecting the Claims Administrator's records under this paragraph shall maintain the confidentiality of the records to the extent necessary to protect the identity and privacy of the Class Members.

(viii) All submissions, requests, or motions made by the Claims Administrator to the BC Court must be served at least 15 days prior to the proposed date for the hearing of the request or motion.

SECTION 5 – SETTLEMENT AMOUNT AND ACCRUED INTEREST

5.1 Settlement Distribution

Any Settlement Amounts held by the Claims Administrator shall be held in trust for the benefit of Class Members and Opt-Ins who are Approved Claimants in the Account, and shall only be paid to Approved Claimants in accordance with the provisions of this Settlement Agreement or as otherwise authorized herein.

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, except as otherwise provided for in Sections 4 and 10.1.

(ii) The funds payable under the Settlement Agreement that Defendants are required to submit to the Claims Administrator under the Settlement Agreement shall be deposited into the Account. The Claims Administrator shall distribute payments under the Settlement Agreement from the Account under the supervision of the BC Court. Funds deposited into the Account shall be maintained and invested in a manner consistent with that of a prudent and reasonable administrator.

(iii) In the event that there are any funds remaining in the Account after payment of all Approved Claims, Notice and Administration Costs, and Class Counsel Fees and Disbursements, such surplus amount shall be remitted to Defendants.

(iv) Defendants shall retain a reversionary interest in all funds held in the Account and interest earned on the funds. If any funds remain in the Account 365 days after the expiration of the Claims Period, those funds and any interest accrued shall be immediately returned to Defendants' Counsel upon written request to the Claims Administrator (copy to Class Counsel), less any funds that have been approved for payment to an Approved Claimant but have not yet been paid out.

5.3 Taxes and Interest

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

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

(iii) All funds held by the Claims Administrator shall be deemed and considered to be in *custodia legis* of the BC Court and shall remain subject to the jurisdiction of the BC Court until such time as such funds are distributed pursuant to the Settlement Agreement and/or further order of the BC Court.

(iv) All taxes payable on any interest that accrues on the funds in the Account shall be the responsibility of the Class. The Claims Administrator, in consultation with 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 – OPTING OUT OF OR INTO THE BC CLASS

6.1 Procedure to Opt Out of the BC Class

(i) A Class Member who is a member of the BC Resident Opt-Out Subclass may exclude oneself from the Class and the Settlement by sending a written request to be excluded from the BC Class by pre-paid mail, courier, fax, or email to the Claims Administrator prior to the Opt-Out Deadline. The Claims Administrator is required to forward a copy of all opt-outs to Defendants' Counsel and Class Counsel within seven (7) days after receiving an opt-out.

(ii) Opt-Out requests must be received by the deadline established and set forth in the Notice of Certification and Settlement Approval, which shall be a date that is 60 days following the first publication date of the Notice of Certification and Settlement Approval in one of the BC publications identified or such other date established by the Court (the "Opt-Out Deadline").

(iii) A member of the BC Resident Opt-Out Subclass who wishes to opt out of the BC Class and the Settlement shall state in his/her written request:

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

(2) A declaration that the person believes he or she is a member of the BC Class and a member of the BC Resident Opt-Out Subclass and the reason for that belief including, if available, the reference/catalogue and lot numbers of his/her Qualified Device;

(3) The statement "I hereby request to be excluded from the BC Class";

(4) The person's signature and printed name following the request to be excluded from the BC Class.

(iv) An opt-out from a member of the BC Resident Opt-Out Subclass will be revoked if that BC Resident Opt-Out Subclass member later submits to the Claims Administrator a completed and executed Claim Form and Claimant's Declaration prior to the expiration of the Claims Period.

6.2 Procedure for Non-BC Residents To Opt In To The BC Class

(i) Those individuals who opted out of the Ontario ASR Class may choose to become a member of the BC Class and Non-BC Resident Opt-In Subclass by completing and timely filing with the Claims Administrator an Opt-In Form, which is attached as Schedule J. Opt-In Forms must be received by the deadline established and set forth in the Notice of Certification and Settlement Approval, which shall be 120 days following the date of first publication of the Notice of Certification and Settlement

Approval in one of the Non-BC publications identified, or such other date established by the Court (the “Opt-In Deadline”).

(ii) By timely filing an Opt-In Form with the Claims Administrator and becoming a member of the BC Class and Non-BC Resident Opt-In Subclass, the person opting in (i) becomes bound by this Settlement and the dismissal order of the BC Court, and (ii) renounces, waives and forfeits any compensation or recovery from any settlement or adjudication in any other class action proceeding in any other Canadian province or territory involving any of the Released Claims in this Agreement. For clarity, members of the Quebec ASR Class as of the date of this agreement may not opt-in to the BC Class or this settlement.

SECTION 7 – OBJECTIONS

7.1 Procedure to Object

The Parties do not contemplate further notice regarding an application for approval of the Amended Settlement Agreement nor procedures to object to this Amended Settlement Agreement given the notice already made in this proceeding regarding the Original Settlement Agreement and the objections already made pursuant to the Notice Order made February 21, 2018. The balance of the provisions in this section refer to procedures which applied at the approval hearing for the Original Settlement Agreement.

(i) A proposed Class Member may object to the approval of the Settlement by sending a written objection by pre-paid mail, courier, fax, or email to Class Counsel. Class Counsel is required to forward all objections to Defendants’ Counsel within 48 hours after receiving an objection.

(ii) Objections must be received before 5:00 p.m. Vancouver 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 objection:

(1) The full name, current mailing address, fax number, 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 or she will be a member of the BC Class if it is certified and the reason for that belief including, if available, the reference/catalogue and lot numbers of his/her 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 8 – RELEASES AND DISMISSALS

8.1 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 and for other valuable consideration set forth in the Settlement Agreement, the Releasing Persons forever and absolutely release the Released Persons from the Released Claims, including but not limited to all claims, actions, causes of action, suits, debts, duties, accounts, bonds, covenants, contracts, and demands whatsoever that were asserted, or could have been asserted, and that are the subject of this Settlement Agreement. For the consideration provided herein, the Releasing Persons agree not to make any 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 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, declaratory, or injunctive nature, from one or more of the Releasees.

(ii) Without limiting any other provisions herein, each Class Member who does not affirmatively opt out of the BC Proceeding (and does not revoke the opt-out election by filing a Claim Form before the expiration of the Claims Period) or who Opts In, as applicable, whether or not he or she 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 who does not affirmatively opt out of the BC Proceeding (and does not revoke the opt-out election by filing a Claim Form before the expiration of the Claims Period) or who opts in, as applicable, whether or not he or she submits a claim or otherwise receives an award, 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.

8.2 No Further Claims

Other than the requirement under Section 4.2 (xiv) applicable to those who are members of both the *Crisante* Ontario ASR Class Action and this *Wilson* British Columbia ASR Class Action and who are Eligible Claimants in this BC class action who need to seek recovery from the *Crisante* Ontario settlement program, the Parties agree that:

(1) 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 or any matter related thereto; and.

(2) 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.

8.3 Dismissal of the Proceedings

The BC Proceeding shall be dismissed with prejudice and without costs as against the Defendants. All lawsuits of Class Members against any Released Persons relating in any way to the Released Claims will be dismissed with prejudice without costs other than the Ontario ASR Class Action.

SECTION 9 – TERMINATION OF SETTLEMENT AGREEMENT

9.1 Right of Termination

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

(1) the BC Court declines to certify a class for settlement purposes and/or declines to approve this Amended Settlement Agreement or any term or part thereof deemed material by Defendants;

(2) any order approving the Amended Settlement Agreement does not become a Final Order;

(3) any order dismissing the BC Proceeding does not become a Final Order;

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

(5) more than ten [10] Class Members opt out.

(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 9.2 and 9.3, 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.

9.2 If Settlement Agreement Is Terminated

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

(1) Any order of the Court certifying the Proceeding as a Class Action for settlement purposes will be set aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise;

(2) Any order approving this Amended 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;

(3) All negotiations, statements, and proceedings relating to the settlement and the Settlement Agreement and its Amendment 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

(4) All funds in the Account (including accrued interest) shall be returned to Defendants' Counsel within 10 days after the date of termination.

9.3 Survival of Provisions After Termination

If this Amended Settlement Agreement is not approved by the BC Court, is terminated in accordance with its terms, or otherwise fails to take effect for any reason, the provisions of this Section and Sections 3.5, 9.2, 12 (i) and (ii), and the Recitals, Definitions, and Schedules applicable thereto shall survive the termination and continue in full force and effect. In addition, the Parties agree that in the event of termination of the Amended Settlement Agreement, nothing shall prevent Defendants and the Releasees from contesting or opposing class authorization in this action or any other action for any purpose.

SECTION 10 – LEGAL FEES AND DISBURSEMENTS

10.1 Class Counsel Fees

(i) The Defendants shall make a contribution in the aggregate toward Class Counsel Fees in the amount of \$275,000 (CAD) plus taxes, provided the Court approves an award of Class Counsel fees in an amount at or greater than \$275,000 (CAD).

(ii) The Defendants also shall make a contribution in the aggregate toward the payment of Court-approved reasonable disbursements in an amount not to exceed \$50,000 (CAD).

(iii) Any unused Disbursement monies shall be used to pay Notice and Administration Costs. If unused Disbursement monies remain after satisfying Notice and Administration Costs, the remaining unused monies will revert to the Defendants.

(iv) Additional Class Counsel fees payable by Approved Claimants, which may be determined and approved by the BC Court, shall be deducted by the Claims Administrator from the settlement awards to Approved Claimants and paid to Class Counsel, and the Court, by reasons, dated July 16, 2018, has given its direction regarding such fees.

10.2 Procedure

(i) Class Counsel will bring motions, with notice to Defendants' Counsel, to the BC Court for determination and approval of Class Counsel Fees and Disbursements payable by the BC ASR Class Members in accordance with Section 10.1(iv). In any such Court application, Class Counsel shall serve and file documentation that supports the amount of Class Counsel Fees claimed.

(ii) Class Counsel Fees and Disbursements payable pursuant to Sections 10.1 (i) and (ii) may be paid out of the Account only after Class Counsel obtains the approval of the BC Court. Payment of Additional Class Counsel Fees under Sections 10.1 (iv) in respect of Class Members is subject to approval of the BC Court. Class Counsel Fees and Disbursements shall be paid in the manner prescribed by Section 10.

(iii) Class Members, including Opt-Ins, who have retained, or in the process of making a claim do retain, lawyers 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, including Opt-Ins, are responsible for their own costs in completing their Claim Form and Claimant Declaration, retrieving and producing medical and hospital records to the Claims Administrator, obtaining a Physician's Declaration where required, and otherwise filing and perfecting their claims under this Settlement Agreement. Defendants are not responsible for these costs and expenses.

(v) Defendants shall make a Subsequent Deposit(s) in amounts not to exceed the amounts set forth in Section 10.1(i) and (ii) to enable the Claims Administrator to pay approved Class Counsel Fees and Disbursements up to the amounts set forth in in Section 10.1(i) and (ii), within 14 days of the BC Court's approval of Class Counsel Fees and Disbursements. However, if the award of Class Counsel Fees and Disbursements is appealed, Class Counsel agrees to return to the Account such Class

Counsel Fees and Disbursements paid from the Account until such award is final without the possibility of further appeal at which time the payment will be returned to Class Counsel. If, following an appeal, the final award of Class Counsel Fees and Disbursements is less than the amount of the Subsequent Deposits made by the Defendants pursuant to this subparagraph, the excess amount shall be returned to Defendants by the Claims Administrator and the remaining amount of the initial payment to Class Counsel pursuant to this subparagraph shall be returned to Class Counsel.

10.3 Payment of Appeal-Related Fees and Costs

Payment of all reasonable and necessary fees and costs charged by those persons serving as Appeal Adjudicator by written agreement of Class Counsel and Defendants' Counsel in connection with any appeal initiated by a Class Member, including Opt-Ins, will be made by Defendants.

SECTION 11 – ADMINISTRATION AND IMPLEMENTATION

11.1 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 the BC Court on motion brought by the Parties, or any one of them.

11.2 Notices Required

The Parties do not contemplate further notice regarding an application for approval of the Amended Settlement Agreement. The notice referred to below at section 11.2(i)(1) has already been given in this proceeding in reference to the Original Settlement Agreement.

(i) The putative BC Class shall be given notice of:

(1) The hearing at which the BC Court will be asked to certify the Class Action and approve the Settlement Agreement; and

(2) The Court Order certifying the BC Class and Approving the 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 E and Schedule F, respectively, as well as a plan for dissemination of the Notice at Schedule E (Schedule G) and a plan for the dissemination of the Notice at Schedule F, if applicable (Schedule H). Counsel acknowledge that all Notices and the respective plans for the dissemination of two Notices must be approved by the BC Court. No notices shall be disseminated until such time as they are approved by the BC Court.

SECTION 12 – NO ADMISSION OF LIABILITY

(i) The Parties agree that whether or not this Settlement Agreement is approved by the BC 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 statute or law, or of any wrongdoing or liability by the Releasees, or of the truth of any of the claims or allegations made in the BC 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 BC 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 13 – MOST FAVOURED CLASS

(i) Notwithstanding any other provision in the Settlement Agreement, if there is an Ontario/Quebec Class Action Settlement Agreement (as defined at Section I (47)), and if a Class Member or Derivative Claimant would have received more individual compensation had he or she been a member of either the Ontario ASR Class Action or the Quebec ASR Class Action, then the Class Member or Derivative Claimant shall be entitled to compensation or additional compensation that puts him or her in the same financial position as if he or she had been a member of one of those other actions, whichever of which shall be most advantageous to the Class Member or Derivative Claimant.

(ii) The Defendants shall timely notify Class Counsel and the Claims Administrator of any Ontario/Quebec Class Action Settlement Agreement.

(iii) If this Section 13 has been triggered by an Ontario/Quebec Class Action Settlement Agreement as defined in Section 1 (47), the Defendants and Class Counsel shall work collaboratively to design procedures to determine if Class Members and Derivative Claimants qualify to obtain any compensation or additional compensation pursuant to this Section, and to notify Class Members and Derivative Claimants of their right to make such a claim, and Class Counsel and the Defendants may jointly issue a letter of instructions to the Claims Administrator as to such procedures and notice which the Claims Administrator shall then implement.

(iv) If the Defendants and Class Counsel cannot agree on letter of instructions to the Claims Administrator as described in paragraph (iv) above, or for any other reason, the Defendants and/or Class Counsel may seek the Court's direction, and the Court shall have all necessary powers to implement and enforce this Section, and to order the Parties and the Claims Administrator to take such steps as may be required to enable Class Members and Derivative Claimants to obtain such compensation or

additional compensation as may be owing under this Section, and to be notified of their rights to do so.

(v) If this Section has been triggered by an Ontario/Quebec Class Action Settlement Agreement that qualifies a Class Member or Derivative Claimant for compensation or additional compensation pursuant to this Section, the Class Member or Derivative Claimant may make a claim for such compensation or additional compensation to the Claims Administrator within thirty (30) days of the issuance of notice pursuant to paragraph (iv) above, irrespective of whether the Class Member or Derivative Claimant has already filed a claim under the balance of the Settlement Agreement or had that claim already adjudicated under the balance of the Settlement Agreement.

(vi) Any settlement agreement in Quebec or Ontario involving claims similar to the claims made in the BC Proceeding that is either (i) entered into after April 5, 2019, or (ii) does not settle on a class-wide basis, does not trigger the provisions of this Section 13.

SECTION 14 – MISCELLANEOUS

14.1 Motions for Directions

(i) The BC Plaintiff, Class Counsel, Claims Administrator, or the Defendants may apply to the BC 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 BC Court for directions, shall be on notice to the Parties.

14.2 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.

14.3 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.

14.4 Ongoing Jurisdiction

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

14.5 Governing Law

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

14.6 Entire Agreement

This Settlement Agreement and the Schedules attached hereto constitute the entire agreement among the Parties, and supersede 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 BC Court.

14.7 Survival

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

14.8 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.

14.9 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.

14.10 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.

14.11 Dates

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

14.12 French Translation

The Parties acknowledge that they also have required that the Original Settlement Agreement, including Schedules, be prepared in French. The English version of the Amended Settlement Agreement is authoritative in British Columbia (and is authoritative as to all Class Members, including Opt-Ins). A French translation of the original settlement agreement and all notices pursuant to this Settlement Agreement shall be paid for by the Defendants. No translation of this Amended Settlement Agreement is required

14.13 Confidentiality

The Parties agree that no public statements shall be made 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 regarding these Proceedings will indicate only that the settlement has been negotiated and agreed by the Parties and approved by the BC 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.

14.14 Recitals

The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

14.15 Schedules

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

Schedule A – Claim Form and Claimant Declaration

Schedule B – Proposed BC Court Order on Notice of Hearing for Class Certification and Settlement Approval

Schedule C – Proposed BC Court Order on Class Certification and Approval of Settlement Agreement

Schedule D – Physician’s Declaration

Schedule E – Form of Notice of Class Proceeding and Approval Hearing

Schedule F – Form of Notice of Class Certification and Settlement Approval

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

Schedule H – Plan for Dissemination of Notice of the Order on Class Certification and Settlement Approval (Schedule F)

Schedule I – List of Complications and Corresponding Payment Amounts

Schedule J – Opt-In Form

Schedule K – Appeal Protocol

14.16 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.

14.17 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.

14.18 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, facsimile, or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

(i) For BC Plaintiff and Class Counsel:

Doug Lennox
Klein Lawyers LLP
Suite 400
1385 West 8th Avenue
Vancouver, BC V6H 3V9
Canada
Telephone: 604-874-7171
Facsimile: 604-874-7180
Email: dlennox@callkleinlawyers.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

[Remainder of Page Intentionally Left Blank]


BC ASR Class Amended Settlement Agreement

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

PLAINTIFF AND CLASS COUNSEL:

Klein Lawyers LLP

Date: February 8, 2021

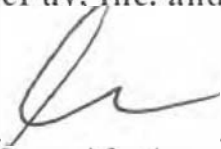
By:  _____

Printed: DOUGLAS LENNOX

DEFENDANTS:

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

Date: **February 9**, 2021

By:  _____
Gordon McKee, Counsel for the Defendants

SCHEDULE A — CLAIM FORM AND CLAIMANT DECLARATION**DEPUY BC ASR REVISION CLASS SETTLEMENT**

This form must be completed and returned to the Claims Administrator by email, mail, fax or in person no later than 5:00 pm Vancouver time on [DATE]***

I am making a claim either myself or through counsel:

- as an Eligible Claimant who was implanted with ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System.
- as the Representative (a person who is the legal representative of an Eligible Claimant who is deceased or under a legal disability) of an Eligible Claimant,

Section A: Claimant Information

First Name	Middle	Last Name
Date of Birth (mm/dd/yyyy)		Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female
Address		
City	Province/Territory	Postal Code
Daytime Phone Number		Cellular Phone Number
Email	Current Provincial Health Insurance Number (“PHN”)	

Did the Claimant’s province of residence change since the time that the Claimant received the ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System?

Yes No

If you checked “Yes,” please list the Claimant’s other province(s) of residence, the date range in which the Claimant lived in each other province, and his/her Provincial Health Insurance Number(S) for those province(s):

Section C: Lawyer Information (if applicable)

Lawyer Last Name	Lawyer First Name
Name of Law Firm	
Address	
Phone Number	Email

Please include any Direction to Pay, if applicable.

Section D: ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System Implant Information (“ASR Implant”)

Location of the ASR Implant: Right Left Bilateral

ASR Implant Date (Right) _____
(mm/dd/yyyy)

Name of Hospital _____

Surgeon _____

ASR Implant Date (Left) _____
(mm/dd/yyyy)

Name of Hospital _____

Surgeon _____

Identification stickers and Contemporaneous Medical/Hospital Records for your ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System must be submitted with this Claimant Declaration.

Please attach:

- Product Identification Stickers
- For ASR Index Surgery, Medical History and Physical, Discharge Summaries, and Operative Reports

- For ASR Revision Surgery, Medical History and Physical, Discharge Summaries, and Operative Reports
- For Complications, Medical History and Physical, Discharge Summaries, and Operative Reports
- If Product Identification Stickers are not available, please provide evidence of efforts to obtain. Contemporaneous Medical/Hospital Records may be provided as evidence of product use if product identification stickers are unavailable.
- If Contemporaneous Medical/Hospital Records are not available, please provide evidence of efforts to obtain. A Physicians Declaration from a treating physician may be provided if Contemporaneous Medical/Hospital Records are unavailable.

Section E: Revision Information

Has the Claimant undergone a revision surgery or surgeries to remove the cup of the ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System?

Yes No

If you checked “No,” please skip to Section F below.

Location of Revision: Right Left Bilateral

ASR Implant Revision Date (Right) _____
(mm/dd/yyyy)

Name of Hospital _____

Surgeon _____

ASR Implant Revision Date (Left) _____
(mm/dd/yyyy)

Name of Hospital _____

Surgeon _____

Section F: Revision Scheduled But Has Not Occurred

Has the Claimant’s doctor recommended and scheduled an ASR Revision Surgery that has not yet taken place?

Yes No

If you checked “Yes,” you must submit a Physician’s Declaration (Schedule D) completed and signed by your physician with this form and complete the remainder of Section F.

If you checked “No” because you have not had an ASR Revision Surgery and are not scheduled to have one, please skip to Section K.

Identify the name and address of the doctor who recommended and has scheduled a date for an ASR Revision Surgery for the Claimant, the date on which the physician made the surgery recommendation and scheduled it, and the date for which the ASR Revision Surgery is scheduled and where.

Date(s) of Surgery Recommendation (MM/DD/YYYY)

Doctor

Address

Medical Condition(s):

Date and place for
Which Surgery Is
Scheduled

Section G: Claimant’s Spouse Information

If the Claimant had at least one ASR Revision Surgery to remove the cup of an ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System, please answer the following:

Did your spouse who was lawfully married to you and who lived with you in the same household at both the time (1) Claimant was implanted with an ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System, AND (2) Claimant underwent an ASR Revision Surgery to remove the cup of the ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System referred to in (1) above.

Yes No

If you checked “Yes,” list the spouse’s name:

Name of Spouse

Section H: Post Revision Complications

Did the Claimant’s revision surgery or surgeries cause any of the following? If so, state the date on which the complication occurred. (Please refer to Schedule H for definitions.)

	Date (mm/dd/yyyy)
Second Revision (Right)	_____
Second Revision (Left)	_____
Third Revision (Right)	_____
Third Revision (Left)	_____
Stroke	_____
Blood Clot	_____
Myocardial Infarction	_____
Infection	_____
Permanent peroneal nerve damage	_____
Death	_____

If you claimed above that the Claimant experienced and was diagnosed any of the listed Complications under the required circumstances (See Schedule H), you must submit Contemporaneous Medical/Hospital Records (as defined in Settlement Agreement) relating to each complication, with this form. If you are claiming any of the Complications for blood clot, infection or permanent peroneal nerve damage, you also must submit a Physician Declaration.

Section I: Extraordinary Income Loss

Complete this section only if the Claimant had an ASR Revision Surgery and you are claiming Extraordinary Income Loss.

- Check here if as a result of an ASR Revision Surgery and Complication as defined on Schedule H, the Claimant incurred an extraordinary income loss that exceeded 20% of the aggregate annual income for the two years preceding the ASR Index Surgery.
- Check here if the Claimant was under 65 years of age when he or she incurred this Extraordinary Income Loss.

If you are claiming Extraordinary Income Loss, attach documentation substantiating all income during the two years preceding the Claimant’s ASR Index Surgery and all income following the ASR Revision Surgery and income lost due to the ASR Revision Surgery and Complication. Include all tax papers pertaining to the income referred to above.

Amount claimed: _____ Supporting tax papers attached

Section J: Request for Re-imbusement of ASR Implant Purchase Cost

Complete this section only if the Claimant had an ASR Revision Surgery.

- Check here if the Claimant purchased his or her ASRTM XL Acetabular Hip System or ASRTM Hip Resurfacing System implanted during the ASR Index Surgery and explanted during his or her ASR Revision Surgery with his or her own funds (*i.e.*, the cost of the implant was not paid by an insurer or reimbursed by anyone). If you checked the box, attach all receipts or other documentation reflecting the amount paid by the Claimant for the ASRTM XL Acetabular Hip System or ASRTM Hip Resurfacing System to this form.

Section K: Declaration

I solemnly declare that:

The Claimant was implanted with one or more ASRTM XL Acetabular Hip System or ASRTM Hip Resurfacing System.

The Claimant wishes to make a claim for compensation in this BC Class either as a BC Resident Opt-Out Subclass Member or as a Non-BC Resident Opt-In Subclass Member.

Attached are copies of the Claimant’s implant surgery and revision surgery operative reports and documentation identifying the catalogue and lot numbers of the ASRTM XL Acetabular Hip System or ASRTM Hip Resurfacing System.

Attached are Claimant’s ASRTM XL Acetabular Hip System or ASRTM Hip Resurfacing System peel-and-stick labels as product identification with this Claim Form. If these product labels are not available, you may include all other proof of product usage from your medical records and request a waiver through the Claims Administrator.

I make this declaration believing it to be true, and knowing that it is of the same legal force and effect as if it were made under oath.

Signature of Claimant or Representative

Date

Please note: All pages of this Declaration and supporting documents must be submitted to the Claims Administrator on or before the Claims Deadline.

**BC ORDER PROVIDING NOTICE OF HEARING ON CLASS CERTIFICATION
AND SETTLEMENT APPROVAL**

This matter was addressed by Court's Order of February 21, 2018.

SCHEDULE C — BC ORDER ON APPROVAL OF AMENDED SETTLEMENT

**No. VLC-S-S-116652
Vancouver Registry**

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THEODORE WILSON

Plaintiff

AND:

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

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE) [Day and Date]
[name]) [Month and Year]
)
)

THE APPLICATION OF the representative Plaintiff for class certification and approval of the settlement of this action pursuant to s.35 of the *Class Proceedings Act*, in accordance with the terms of the Amended Settlement Agreement was heard this day in Vancouver, British Columbia.

UPON READING the representative Plaintiff's application record, and upon hearing the submissions of counsel for the representative Plaintiff Theodore Wilson, and counsel for the Defendants, DePuy International LTD., DePuy Orthopaedics, Inc., DePuy, Inc., and Johnson & Johnson, and upon being advised that the parties consent to this order,

THIS COURT ORDERS AND DECLARES that:

Amended Settlement Agreement

1. The definitions set out in the Amended Settlement Agreement, which is attached as Schedule "A", apply to and are incorporated into this Order.

Opting Out or In

2. Any BC Resident Opt-Out Subclass Member may opt out of the class and settlement by providing to the Claims Administrator, a written request to be excluded from the BC Class by pre-paid mail, courier, fax, or email to the Claims Administrator no later than 60 days following the first publication date of the Notice of Certification and Settlement Approval in one of the BC publications identified on Schedule H (the "Opt-Out Deadline").

3. A member of the BC Resident Opt-Out Subclass who wishes to opt out of the BC Class and the Settlement shall state in his/her written request:

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

(2) A declaration that the person believes he or she is a member of the BC Class and a member of the BC Resident Opt-Out Subclass and the reason for that belief including, if available, the reference/catalogue and lot numbers of his/her Qualified Device;

(3) The statement "I hereby request to be excluded from the BC Class";

(4) The person's signature and printed name following the request to be excluded from the BC Class.

4. Opt-Out requests must be received by the deadline. Further, an opt-out from a member of the BC Resident Opt-Out Subclass will be revoked if that BC Resident Opt-Out Subclass member later submits to the Claims Administrator a completed and executed Claim Form and Claimant's Declaration prior to the Claim Deadline established by the BC Court.

5. The Opt-In Form for Non-BC Residents to opt in to the Non-BC Resident Opt-In Subclass is approved in substantially the form attached as Schedule "J".

6. The Claims Administrator will provide to the Defendants and Class Counsel copies of all opt-in forms and opt-out statements received by the Claims Administrator within seven (7) days of receipt.

Settlement Approval

7. The settlement of this action, as set out in the Amended Settlement Agreement, is fair and reasonable and in the best interests of the BC Class Members, including the BC Resident Opt-Out Subclass and the Non-BC Resident Opt-In Subclass, and is hereby approved.

8. The Defendants shall pay the amounts required under the Settlement Agreement subject to the rights of termination in Section 9 of the Settlement Agreement.

Notice and Notice Plan

9. The form and content of the Notice of Class Certification and Settlement Approval shall be substantially in the form which appears at Schedule “F” to the Amended Settlement Agreement.

10. The Class Members shall be given notice of this order in accordance with the plan attached as Schedule “H” to the Amended Settlement Agreement.

11. The notification plan described in paragraphs 12 to 14 above of this Order satisfies the requirements of s. 19 of the *Class Proceedings Act*.

Claims Administrator

12. Epiq Class Action Services Canada Inc. is appointed the Claims Administrator.

Class Release and Dismissal

13. The Settlement Agreement and this Order are binding upon each Class Member, including each BC Resident Opt-Out Subclass member and Non-BC Resident Opt-In Subclass member, whether or not such person receives or claims compensation, including persons who are minors or are mentally incapable.

14. Upon the Effective Date, the Released Persons are forever and absolutely released 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 other comparable provincial legislation and any amendments thereto, the common law, Quebec 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.

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

16. This action is dismissed without costs and with prejudice.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of
[] party [] lawyers for Plaintiffs

Signature of
[] party [] lawyers for the Defendants

By the Court.

Registrar

SCHEDULE D -- PHYSICIAN DECLARATION FORM

In completing this Form, you may consider the patient’s medical records, charts, reports, diagnostic films, medical history, or other sources of information that physicians regularly and routinely rely upon in their practice. By signing this Form, you certify that all opinions set forth below are offered to a reasonable degree of medical certainty.

1. PHYSICIAN BACKGROUND

(First Name)	(Middle Initial)	(Last Name)
(Office Address)		
(City)	(Province)	(Postal Code)
(Area Code & Telephone Number)	(Fax Area Code & Number)	

Check whether you are a/an:

- Orthopedic surgeon
- Cardiologist
- Neurologist
- Cardiothoracic surgeon
- Neurosurgeon
- Other _____

College of Physicians and Surgeons Registration Number: _____

2. PATIENT INFORMATION

State the name and birth date of the patient for whom you are providing the information contained in this Physician Declaration Form.

(First Name)	(Middle Initial)	(Last Name)
(Birth Date MM/DD/YYYY)		

Are you one of the patient’s treating physicians?

- Yes No

If “Yes,” state your role in the patient’s medical care and treatment relative to his/her ASR™ XL Acetabular Hip System and/or ASR™ Hip Resurfacing System implant and/or Revision Surgery:

3. IMPLANT INFORMATION

State the reference and catalog numbers that correspond to the patient’s ASR™ XL Acetabular Hip System and/or ASR™ Hip Resurfacing System.

Date of Implantation (Right)	_____
	(MM/DD/YYYY)
Implant Reference/Catalogue Numbers	_____
	(if available)
Implant Lot Number	_____
	(if available)
Date of Implantation (Left)	_____
	(MM/DD/YYYY)
Implant Reference/Catalogue Numbers	_____
	(if available)

4. REVISED PATIENT

Has the patient been diagnosed as medically requiring a revision surgery to replace the cup of his or her ASR™ XL Acetabular Hip System and/or ASR™ Hip Resurfacing System?

Yes No

If “Yes,” please answer the remaining questions in section 4, If “No,” please skip to section 6.

Date of the diagnosis: _____
(MM/DD/YYYY)

5. SCHEDULED REVISION

Has a revision surgery been scheduled? Yes No

If “Yes,” if the person was placed on a waiting list to have the surgery, enter the date the person was placed on the list:

_____ (MM/DD/YYYY)

If “Yes,” the date the surgery is scheduled to occur: _____
(MM/DD/YYYY)

Has the surgery occurred? Yes No

If “Yes,” date on which the revision surgery took place: _____
 (MM/DD/YYYY)

Describe all reason(s) a revision surgery for the cup of the ASR™ XL Acetabular Hip System and/or ASR™ Hip Resurfacing System has been diagnosed and identify all testing or films taken and the results that support this diagnosis:

6. COMPLICATIONS RESULTING FROM REVISION SURGERY

Check here if the patient underwent a revision surgery or surgeries to remove the cup of his/her ASR™ XL Acetabular Hip System and/or ASR™ Hip Resurfacing System (referred to herein as “ASR Revision Surgery”).

If you checked the box above, and the patient sustained any of the following complications during or after his/her ASR Revision Surgery due to the ASR Revision Surgery, please state the date on which the complication(s) occurred:

DATE
 (MM/DD/YYYY)

(a) Blood Clot means a diagnosis made within 72 hours of an ASR Revision Surgery of pulmonary embolism or deep vein thrombosis that resulted from the ASR Revision Surgery and which required a new hospitalization or extended the hospitalization after the ASR Revision Surgery. Please include records of any prior PE/DVT history.

(b) Infection means any infection in the revised hip that is diagnosed within 30 days after the ASR Revision Surgery and determined to have been caused by the ASR Revision Surgery and which required one of the following: (i) eight weeks of intravenous antibiotic treatment, (ii) surgical debridement with prosthesis retention, (iii) implantation with an antibiotic spacer; or (iv) arthrodesis. However, excluded from this complication are infections caused by an organism where the contemporaneous medical records reflect that this organism was identified pre-ASR Revision Surgery, but was not shown to be eradicated prior to the ASR Revision Surgery.

(c) Permanent Peroneal Nerve Damage or Foot Drop resulting in an inability to lift the front part of the foot from permanent nerve damage caused by the ASR Revision Surgery and was diagnosed during the hospitalization for the ASR Revision Surgery, has lasted 90 days and in your opinion is permanent.

Please attach to this form medical records that are contemporaneous to the ASR Revision Surgery and any of the Complications above that are applicable and that confirm that the Complication(s) noted above occurred. Such medical records may include, but are not limited to, operative reports, pathology reports, office records, and/or discharge summaries.¹

7. DECLARATION

I affirm that the foregoing representations are true and correct.

Executed on _____, 201_.

By: _____
Signature of Physician

Printed Name

¹ You must submit a Physician's Declaration along with medical records if you are claiming a Complication from a blood clot, infection, or permanent peroneal nerve damage, or you are claiming a scheduled but not yet occurring ASR Revision Surgery that was placed on a surgery schedule by the Eligibility Date. ASR Implants, ASR Revision Surgeries, and all other medical Complications must be proved by medical and/or hospital records that are contemporaneous to the occurrence of the ASR Implant, ASR Revision Surgery or Complication.

**SCHEDULE E- NOTICE OF HEARING ON CLASS CERTIFICATION AND
SETTLEMNT APPROVAL**

This matter was addressed by Court's Order of February 21, 2018.

SCHEDULE F — NOTICE OF CLASS CERTIFICATION AND SETTLEMENT APPROVAL

Did you, or a family member, undergo a surgery to implant a DePuy ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System in Canada?

This notice may affect your rights. Please read carefully.

A proposed class action lawsuit captioned *Wilson v. DePuy International Ltd., et al.*, Action No. S-116652, was filed in the Supreme Court of British Columbia regarding allegations that the DePuy ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System was defective, and that they failed prematurely, requiring revision surgery (“*Wilson Action*”). While not admitting liability, the Defendants have agreed to consent to its certification as a class action and to settle the case. The BC Court certified the *Wilson Action* as a class action (“BC Class”) on July 16, 2018 and approved the Amended Settlement Agreement on [date] (“Settlement Agreement”).

Who is in the BC Class and Potentially Eligible to Participate in the Settlement?

The BC Class is defined as follows:

- (a) BC Resident Opt-Out Subclass: all persons resident in British Columbia who underwent the surgical implantation of the ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System in a surgery occurring in Canada (“ASR Index Surgery”).
- (b) Non-BC Resident Opt-In Subclass: all persons who previously were members of the Ontario ASR Class Action but who opted out of the Ontario ASR Class Action and who affirmatively opt into this BC ASR Class Action.
- (c) All residents of Canada asserting the right to sue the Defendants independently or derivatively by reason of their familial relationship to a Class Member under either the common law of Family Compensation Act applicable to the BC Resident Opt-Out Subclass, or for Non-BC Resident Opt-In Subclass members, those defined pursuant to section 61(1) of the Family Law Act, R.S.O. 1990, c. F.3 ;as amended (or any similar legislation in any of the Canadian provinces and territories or the Civil Law of Quebec).

An Eligible Claimant under the Settlement means a member of the BC Class (either as a member of the BC Resident Opt-Out Subclass or Non-BC Resident Opt-In Subclass) who (a) was a Canadian Patient, (b) underwent an ASR Index Surgery, and (c) underwent an ASR Revision Surgery. The Settlement Agreement defines the terms used in this Notice.

For BC Residents Only: Excluding Yourself from the BC Class Action and Settlement

If you are a resident of British Columbia who meets the BC Class definition and you wish to exclude yourself from the BC Class Action and Settlement, you must deliver a written submission declaring your intention to opt out of the class action to the Claims Administrator by registered or certified mail at the addresses below on or before [DATE]. Your submission must include your name and address and the statement “I wish to be excluded from the BC Class.” If

you exclude yourself from the class action, you will not be able to seek compensation under the Settlement Agreement. If you opt out of the BC Class Action but later file a claims form prior to the expiration of the Claims Period, your opt-out will be revoked and you will be a member of the BC Class and subject to the terms of the Settlement Agreement. The deadline for you to exclude yourself from the BC Class and Settlement is: **[DATE]**.

Non-BC Residents Only: Joining the BC Class Action and Settlement

If you have opted out of the Ontario ASR Class action and meet the BC Class definition you may opt into the BC Class Action and Settlement by delivering a copy of the Ontario opt-out form and a completed and Signed Opt-In Form (Schedule J to the Settlement Agreement) to the Claims Administrator by mail or email at the address below on or before [date].

The Terms of Settlement

The settlement provides certain compensation to class members who are or become Eligible Claimants and who timely submit all forms and documentation under the Settlement Agreement, less deductions for legal fees. Class members who are eligible and submit approved claims could receive \$100,000 if they have undergone a single revision or \$120,000 if they have undergone a bilateral revision, subject to reductions for length of time the device was in place and other things outlined in the settlement agreement. Eligible class members who have undergone either a single or bilateral revision and have experienced certain additional complications, including extraordinary income loss, may receive additional funds up to \$40,000 as set out in the settlement agreement. Amounts may also be payable to spouses of approved claimants. Details on eligibility and the amounts approved claimants may receive are in the settlement agreement which can be viewed on class counsel's website.

For any individuals who are members of both the *Crisante* Ontario ASR Class Action and this *Wilson* British Columbia ASR Class Action and who are Eligible Claimants in this BC class action: the Ontario court will shortly be asked to approve a settlement in the *Crisante* Ontario class action. A person who is a member of both class actions will only obtain one recovery. They will need to seek settlement recovery from the *Crisante* Ontario ASR Class Settlement Program unless the *Crisante* Ontario ASR Class Settlement Program is not approved before the last payment has to be made under the *Wilson* British Columbia ASR Settlement Program. Please contact Class Counsel below if you are uncertain whether you are a member of both classes.

Please refer to the Settlement Agreement for specific terms and conditions. It may be found at **[www.Website.com]** or call the Claims Administrator.

The Settlement Agreement includes a "Most Favoured Class" clause which may provide for enhanced compensation. Please consult with Class Counsel to inquire as to whether this clause impacts your claim.

To Make a Claim

To be entitled to a payment pursuant to the Settlement Agreement, Class Members, including Opt-Ins, must be Eligible Claimants and submit all required forms and documentation to the

Claims Administrator on or before the expiration of the Claims Period. Class counsel is available to assist class members in filling out the required claim form.

An Eligible Claimant under the Settlement means a member of the BC Class (either as a member of the BC Resident Opt-Out Subclass or Non-BC Resident Opt-In Subclass) who (a) was a Canadian Patient, (b) underwent an ASR Index Surgery, and (c) underwent an ASR Revision Surgery on or before August 24, 2020. See the Settlement Agreement for terms relating to Last Eligible Date and Claims Period.

For Eligible Claimants who had ASR Revision Surgery, the Claims Period expires 180 days after the Effective Date.

For More Information or to Obtain a Claim Form

Please contact Class Counsel or the Claims Administrator below:

Class Counsel in *Wilson* Action:

Klein Lawyers LLP
Suite 400
1385 West 8th Avenue
Vancouver, BC V6H 3 V9
Telephone: 604-874-7171
Facsimile: 604-874-7180
www.callkleinlawyers.com

Claims Administrator:

Epiq Class Action Services Canada Inc.
[address]

**SCHEDULE G- PLAN FOR DISSEMINATION OF NOTICE OF CLASS CERTIFICATION
AND SETTLEMENT APPROVAL HEARING**

This matter was addressed by Court's Order of February 21, 2018.

**SCHEDULE H -PLAN FOR DISSEMINATION OF NOTICE OF COURT ORDER
CERTIFYING CLASS AND APPROVING SETTLEMENT**

The Notice of the Order Certifying Class and Approving Settlement (the "Notice") shall be disseminated to the BC Class by the following means:

1. Class Counsel shall send copies of the Notice by mail or email to all class members who have contacted Class Counsel regarding this action and provided their contact information.
2. Class Counsel will forward copies of the Notice by mail or email to class members identified by the British Columbia Ministry of Health.
3. The Claims Administrator and Class Counsel shall post copies of the Notice to their respective websites.
4. Class Counsel shall forward copies of the Notice to counsel for those individuals who opted out of the Ontario ASR Class.
5. Counsel shall arrange for publication of the Notice in the following publications (either single insertion, ¼ panel or through the use of digital banner ads that link to the website notice set out in #3 above), with such publication to occur as soon as reasonably feasible following the date of the Final Order:
 - (a) Globe & Mail (all editions)
 - (b) Vancouver Sun
 - (c) Vancouver Courier
 - (d) The Province
 - (e) Times Colonist
 - (f) Victoria News
 - (g) Tri-City News

SCHEDULE I — LIST OF COMPLICATIONS AND CORRESPONDING PAYMENT AMOUNTS

SECTION 1: DEFINITIONS

In this Schedule, the following is a Complication:

- (1) “Blood Clot” means a diagnosis made within 72 hours of an ASR Revision Surgery of pulmonary embolism or deep vein thrombosis that resulted from the ASR Revision Surgery and which required a new hospitalization or extended the hospitalization after the ASR Revision Surgery. This amount will be discounted by 50% if the patient had a prior history of pulmonary embolism or deep vein thrombosis.
- (2) “Death” means the class member died within 72 hours after any ASR Revision Surgery as a result of the ASR Revision Surgery.
- (3) “Extraordinary Income Loss” means an amount in excess of 20% of the aggregate annual income for the two years preceding the ASR Index Surgery of an Approved Claimant under the age of 65 up to a maximum of \$10,000 where the loss was solely due to the Approved Claimant’s ASR Revision Surgery and any resulting medical Complication and which is subject to the aggregate cap of \$40,000 (CAD).
- (4) “Infection” means any infection in the revised hip that is diagnosed within 30 days after the ASR Revision Surgery and determined to have been caused by the ASR Revision Surgery and which required one of the following: (i) eight weeks of intravenous antibiotic treatment, (ii) surgical debridement with prosthesis retention, (iii) implantation with an antibiotic spacer; or (iv) arthrodesis. However, excluded from this complication are infections caused by an organism where the contemporaneous medical records reflect that this organism was identified pre-ASR Revision Surgery, but was not shown to be eradicated prior to the ASR Revision Surgery.
- (5) “Myocardial Infarction” means a myocardial infarction occurring (i) during an ASR Revision Surgery or (ii) during the hospitalization for the ASR Revision Surgery.
- (6) “Permanent Peroneal Nerve Damage” or “Foot Drop” means nerve damage resulting in an inability to lift the front part of the foot that resulted from an ASR Revision Surgery and was diagnosed during the hospitalization for the ASR Revision Surgery and which has lasted ninety (90) days and has been declared permanent by the medical professional who signed the Physician’s Declaration.
- (7) “Second Revision” means a second ASR Revision Surgery to remove a replacement hip implant that had been installed as part of a ASR Revision Surgery because the replacement hip implant failed. This complication does not apply to an Excluded Trauma-Related Revision.
- (8) “Stroke” means a cerebrovascular incident or insult occurring within 72 hours of an ASR Revision Surgery causing damage. A transient ischemic attack or “TIA” is not considered a stroke for purposes of this complication.

(9) “Third Revision” means a surgery to remove a replacement hip implant that had been installed as part of a Second Revision following an ASR Revision Surgery because second and third replacement hip implants failed. This complication does not apply if either the Second Revision or Third Revision was an Excluded Trauma-Related Revision.

SECTION 2: CORRESPONDING PAYMENT AMOUNTS

2.1 The amounts payable under section 4.2(9)(c) of the Settlement Agreement to BC Class Members of either subclass who have demonstrated by medical records contemporaneous to the medical complication claimed and their ASR Revision Surgery that they are an Eligible Claimant who suffered a Complication defined above due to an ASR Revision Surgery are set forth below. However, in no event shall a BC Class Member of either subclass who has become an Approved Claimant for a Complication Award be awarded more than \$40,000 in the aggregate for all Complications sustained, which amounts are subject to the reductions set forth in the Settlement Agreement and this schedule.

Complication	Payment
Infection	\$10,000 (CAD)
Permanent Peroneal Nerve Damage	\$20,000 (CAD)
Second Revision	\$20,000 (CAD)
Blood Clot	\$10,000 (CAD)
Myocardial Infarction	\$40,000 (CAD)
Stroke	\$40,000 (CAD)
Third Revision	\$40,000 (CAD)
Death	\$40,000 (CAD)
Extraordinary Income Loss	up to \$10,000 (CAD)

2.2 The amounts payable at paragraph 2.1 of Schedule I are cumulative, but in no event shall more than \$40,000 be payable to a BC Class Member of either subclass for Complications under this Schedule. Thus, regardless of the number of Complications a BC Class Member or Opt-In has, the Approved Claimant can recover only up to a total of \$40,000 for all Complications, which include the medical complications and Extraordinary Income Loss.

2.3 Only a Complication diagnosed, or an Extraordinary Income Loss incurred, on or before the Eligibility Deadline and reflected in contemporaneous medical records and income and tax records, is compensable under this Settlement Agreement.

2.4 All amounts are subject to the reductions set forth in the Settlement Agreement and this schedule and any applicable counsel fees. Any reductions are retained by Defendants.

**Schedule “J” -- OPT-IN FORM
BC ASR Class Settlement**

If you reside in Canada but outside of British Columbia and are not a member of the Quebec ASR Class or the Ontario ASR Class, as you opted out of the Ontario ASR Class, but you otherwise qualify and want to be included in the class action settlement in the action *Wilson v. Depuy International Ltd., DePuy Orthopaedics Inc., DePuy, Inc. and Johnson & Johnson*, File No. No. S-116652, Supreme Court of British Columbia, you must fill out this form and return it to the following address by no later than _____ **[DATE]**.

ASR Hip Class Settlement
Epiq Class Action Services Canada Inc.
[addresss]

1. Please fill in your name and address:

Name

Street

City

Province

Postal Code

Telephone

Email

2. By signing this form, you represent, warrant and agree:
- (a) that your claims are not subject to a judgment or a trial that has commenced;
 - (b) to be bound by the terms of the BC ASR Class Settlement Agreement, including the release of all Released Claims against all Released Persons, which Settlement Agreement you have read and understand, and to be bound by the terms of the Class Settlement Approval Order of the British Columbia court;
 - (c) to waive and forfeit any rights to pursue, or receive recoveries from, other proceedings, including any other class actions, against DePuy International Limited, DePuy Inc., DePuy Orthopaedics, Inc., and Johnson & Johnson Inc. with respect to ASR™ XL Acetabular Hip System (“ASR XL”), or the ASR™ Hip Resurfacing System (“ASR Resurfacing”), and any and all Component and Ancillary Parts (as defined in the BC ASR Settlement Agreement), in return for the recovery available pursuant to the BC ASR Settlement Agreement;
 - (d) that this Opt-In election to the BC Class, Non-BC Resident Opt-In Subclass, and the BC ASR Class Settlement Agreement by you by the submission of this form is irrevocable and cannot be changed or revoked by you unless the Effective Date is not reached.

3. Please attach a copy of your opt out form from the Ontario ASR Class.

X
Signature

Date

SCHEDULE K - APPEAL PROTOCOL

The following procedure shall apply to appeals of decisions by the Claims Administrator that may be brought by a BC Class Member (BC Resident Opt-Out Subclass Member or Non-BC Resident Opt-In Subclass Member) or the Defendants pursuant to section 4.5(viii) of the Settlement Agreement (“Appealable Decisions”):

1. The party who seeks to appeal an Appealable Decision (the “Appellant”) shall submit to the Claims Administrator a written statement setting out the nature of, and the reasons for, the appeal (the “Appeal Statement”). The time for submitting an Appeal Statement is as follows:
 - (a) for a BC Class Member of either subclass -- within 30 days after the Appellant was deemed to have received the Class Administrator’s decision that is the subject of the Appeal Statement; and
 - (b) for Defendants—within 30 days after receiving notice of the Class Administrator’s decision under Section 4.5(viii) of the Settlement Agreement.
2. Upon receipt of the Appeal Statement, the Claims Administrator shall send a copy of the Appeal Statement to the Defendants (c/o their counsel, where a Class Member or Opt-In is the Appellant) or to the affected Class Member or Opt-In (where the Defendants are the Appellant) (the “Respondent”) for review and consideration. The Respondent shall inform the Claims Administrator of whether it agrees or disagrees with the Appellant’s Appeal Statement within 30 days following the Respondent’s receipt of the Appeal Statement. If the Respondent agrees with the Appellant’s Appeal Statement, the Claims Administrator shall accept the Appellant’s position and change the decision accordingly.
3. If the Respondent disagrees with the Appellant’s Appeal Statement, then the Appellant shall have a right to appeal the Claims Administrator’s decision to the private Appeal Adjudicator, who sits as an arbitrator (the “Arbitrator”). For all BC Class Members, including Non-BC Resident Opt-In Subclass Members, the Appeal Adjudicator shall be the Honourable Marion J. Allan.
4. The Claims Administrator shall contact the applicable Arbitrator and ask the Arbitrator to provide a pre-estimate of its fee for conducting the appeal. As a pre-condition to submitting an appeal to the Arbitrator, the Appellant shall provide to the Claims Administrator (for forwarding to the Arbitrator) a cheque payable to the Arbitrator in an amount representing 50% of the Arbitrator’s pre-estimated fee for conducting the appeal within 30 days of receipt of the estimate or else the appeal shall be automatically dismissed by the Claims Administrator.
5. The Claims Administrator shall send the Respondent a copy of the Appellant’s Appeal Statement and confirmation that the Appellant has provided payment of the Arbitrator’s fee. Within 30 days after receiving the Appeal Statement and notice of payment of the Arbitrator’s fee, the Respondent shall provide to the Claims Administrator a statement of its position in response to the appeal (the “Responding Statement”) and a cheque payable

- to the Arbitrator in an amount representing the remaining 50% of the Arbitrator's pre-estimated fee for conducting the appeal.
6. If the Respondent fails to provide the Claims Administrator with both its Responding Statement and 50% portion of the estimated Arbitrator's fee within 30 days after the Respondent has received the Appeal Statement, the Appellant's appeal shall be deemed to have been allowed.
 7. Upon receipt of the Respondent's Responding Statement and Arbitrator's fee, the Claims Administrator shall send to the Arbitrator the Appeal Statement, the Responding Statement, and the two cheques respecting the Arbitrator's fee.
 8. The appeal shall be conducted entirely in writing. There will be no oral hearing of any appeal.
 9. The Arbitrator shall consider the appeal and render a decision within 45 days following the Arbitrator's receipt of the appeal material from the Claims Administrator. The Arbitrator shall provide the Appellant and the Respondent with written reasons in support of the appeal decision.
 10. If the appeal is allowed, the Arbitrator shall order the Respondent to pay to the Appellant within 30 days following release of the appeal decision the entire amount of the arbitration fee that the Appellant had paid. If the appeal is dismissed, the Arbitrator shall order the Appellant to pay to the Respondent the entire amount of the Arbitrator's fee which the Respondent had paid.
 11. If the Arbitrator determines that success on the appeal was divided relatively equally between the Appellant and the Defendants, then the Arbitrator shall order that neither party shall have to reimburse the other for any portion of the Arbitrator's fee which it had paid in advance of the appeal.
 12. If the Arbitrator's fee exceeds the amount of the pre-estimated fees that were paid by the Appellant and the Respondent in advance of the appeal, then the Arbitrator shall order the party that was unsuccessful on the appeal to pay the additional amount of the Arbitrator's fee within 30 days after the date of release of the Arbitrator's decision. If the Arbitrator determines that the success on the appeal was divided between the two parties relatively equally, then the Arbitrator shall order any additional fee to be paid in equal 50% portions by each of the Appellant and the Respondent within 30 days after the date of the Arbitrator's decision.
 13. The Arbitrator's decision shall be final and binding. There shall be no right of appeal from the Arbitrator's decision.