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

IN RE: AMERICAN MEDICAL SYSTEMS, INC.
PELVIC REPAIR SYSTEMS, **MDL NO. 2325**
PRODUCTS LIABILITY LITIGATION

THIS DOCUMENT RELATES TO ALL CASES

JOINT REPORT OF NEGOTIATING PLAINTIFFS' COUNSEL AND AMERICAN MEDICAL SYSTEMS' SETTLEMENT COUNSEL REGARDING STATUS OF SETTLEMENT NEGOTIATIONS

Pursuant to the Court's request, Negotiating Counsel[1] and Settlement Counsel for American Medical Systems ("AMS") respectfully submit this report regarding the status of settlement negotiations with regard to the approximately 19,450 cases pending against AMS in MDL 2325, 2187, 2326, 2387 and 2440. As set forth more fully below, Counsel have engaged in extensive negotiations since September 2013 and have developed a framework and process for negotiating the fair and equitable settlement of such cases.

As the Court is aware from the meetings and phone conferences held with the Court, this negotiation has been intense, detailed, and complex. Settlement negotiations commenced in September 2013 between Joseph Rice of Motley Rice LLC, William Levin of Levin Simes LLP, Henry Garrard III of Blasingame Burch Garrard Ashley PC, and others from Motley Rice, and AMS Settlement Counsel Ellen Reisman, Ethan Greene, and Andrew Karron of Arnold & Porter LLP. Counsel engaged in numerous face to face meetings and telephonic meetings and

[1] For purposes of this Report, "Negotiating Counsel" means Joseph Rice of Motley Rice LLC, William Levin of Levin Simes LLP, and Henry Garrard III of Blasingame Burch Garrard Ashley PC. Motley Rice and Blasingame Burch Garrard Ashley are the firms of two of the three Coordinating Co-Lead Counsel for the Plaintiffs, and Levin Simes is one of the Plaintiffs' Co-Lead Counsel in AMS MDL 2325.

exchanged relevant documents and data. The negotiations were conducted pursuant to a confidentiality agreement providing that information exchanged by the negotiating parties could only be used for the settlement negotiations.

Counsel recognized early in the process that MDL 2325 encompasses cases involving a wide variety of AMS mesh products, a wide variety of claimed symptoms and treatments, and plaintiffs with varied medical histories and personal characteristics. Approximately two-thirds of plaintiffs assert claims involving AMS mesh products implanted to treat stress urinary incontinence ("SUI"), and approximately one-third of plaintiffs assert claims involving different AMS products implanted to treat pelvic organ prolapse ("POP"). Plaintiffs range from those who have AMS pelvic mesh products in place but have alleged no treatments attributed to the mesh to plaintiffs who have received various forms of in-office treatment and/or drug therapy to plaintiffs who have undergone one or more surgeries to address mesh-related issues. Plaintiffs' underlying medical conditions (including unrelated conditions) vary extensively, and plaintiffs range in age from their thirties to seventies at the time of implant. Moreover, plaintiffs reside in numerous states which may have varying statutes of limitations and other substantive legal standards.

Consistent with the process used in other mass tort cases, Counsel sought to develop a resolution process that could be used to classify claims by taking into account the variables described above and which Counsel could then use to attempt to negotiate proposed settlement values for cases falling into various positions on a negotiated matrix. Such a matrix would have distinguished between SUI and POP cases and, for each of those, distinguished between cases involving product in place with no treatment, cases involving symptoms and treatment but no surgery, and cases involving 1 mesh-related surgery, 2 surgeries, or 3 or more surgeries or other

alleged extraordinary injury. Each of these categories have been further refined to take account enhancing or reducing factors, including age at time of implant, other medical conditions, the involvement of products from other manufacturers, and other relevant factors. In seeking to negotiate the potential matrix, counsel consulted medical professionals, and took account of relevant information developed by plaintiffs' counsel in the course of preparing their cases and consulting with their colleagues regarding other pending cases.

As Counsel sought to develop a proposed matrix, several issues became apparent:

First, while it was relatively simple to distinguish between cases involving explant surgery and other cases, negotiation of covered conditions and treatments and enhancing and reducing factors, and criteria for evaluating severity, proved complex. This was due in part to the fact that certain types of conditions -- for example, infections requiring antibiotic treatment, dyspareunia, and the like -- can occur in the population at large, so that in at least some cases there could be a question regarding whether such conditions or treatments were mesh-related. Other claimed conditions, such as pain, can be difficult to establish or measure with objective evidence.

Second, while it was a relatively straightforward task to categorize cases in a matrix, it proved difficult to agree even on relative values for different categories of cases, let alone set values or a range of values for each category. For example, some cases that involved in-office treatment but not surgical explant of mesh presented complicating factors that, in the judgment of Negotiating Counsel, rendered the compensable injury more significant than certain surgical cases. Moreover, Negotiating Counsel recognized that counsel for other plaintiffs might have their own, different, views on the relative values of the various cases in which they represented plaintiffs.

Third, the first two difficulties are exacerbated by the burden and expense of obtaining and interpreting all relevant medical records. Obtaining medical records can be time-consuming and expensive, and expert review and interpretation adds to the expense. Thus, Counsel recognized that, even if a matrix could be negotiated, it might prove difficult and expensive to apply in practice to individual cases. Obtaining and interpreting medical records for all plaintiffs, or establishing a claims facility to do so, would inevitably delay the ultimate payment of settlement amounts. Moreover, the substantial expense of operating a claims facility that conducted a full medical record review would likely reduce the funds available to pay claims. Counsel believed it was desirable to avoid such delay and administrative costs.

Fourth, the potential impact of these issues varied among law firms. Different firms had different overall numbers of cases and different proportions of cases in each category (*e.g.*, product in place, non-surgical treatment, surgery, multiple surgeries, etc.). Moreover, the extent to which firms had fully worked up and documented their cases varied, depending on a variety of factors, including the age of the case, whether it was set for trial, etc.

After carefully considering these issues, Negotiating Counsel concluded that developing a single "one size fits all" matrix that could be applied by a claims facility to process all participating settling claims was not a workable approach in this unique proceeding. Fully negotiating each category would consume additional weeks or months, if it could be accomplished at all. And, even then, there could be no assurance it would be acceptable to all or even the majority of firms and plaintiffs. Moreover, case-by-case claims processing with full medical records would result in further delay and enormous expense. AMS Settlement Counsel and Negotiating Counsel concluded that, instead, it was preferable to develop a simplified

categorization of plaintiff claims and allow individual law firms to provide AMS with the relevant claimant names and categories for their clients.

Each law firm and AMS will then negotiate an overall dollar settlement based on a comprehensive medical review of claims represented by that firm (or a statistically significant sample of such claims as determined by AMS). Each party will categorize the claims among the five categories set forth in Exhibit A and will take that into account in negotiating an overall settlement amount for the clients of that firm. Medical documentation to be provided to AMS would include: (1) Proof of eligible AMS product implant, (2) operative reports for all surgeries, and (3) other medical records required to substantiate a plaintiff's claim of a symptom or treatment. That total settlement will then be allocated among the claimants by the law firm or a special master.

An essential element of all settlements will be participation by the vast majority of claims represented by the law firm, the exact percentage number of which will be negotiated by the parties. If that participation threshold is not met, then AMS will have the right to terminate the settlement with that law firm. To the extent fewer than all claims participate, the total settlement payment will be reduced by an agreed-upon amount for each such non-participating claim.

AMS contemplates that settlement payments will initially be made into Qualified Settlement Funds ("QSF") over a period of time. A QSF will release payments upon receiving appropriate releases, documentation establishing that all Medicare and/or similar health insurance liens are being satisfied by the claimant, and authorization from the Court and/or any special master.

The negotiating parties believe that this approach is practical, flexible, and efficient, and offers the greatest promise of resolving the largest number of cases in the shortest possible time.

AMS Settlement Counsel represent that, consistent with the above-described approach, they are currently in settlement negotiations with multiple plaintiffs' law firms, including those of Negotiating Counsel. AMS Settlement Counsel also recognize that some law firms will present circumstances that make an alternative resolution approach more practical -- for example, a law firm with a small number of clients. AMS will be prepared and open to the discussion of alternative approaches in such situations.

* * *

Negotiating Counsel and AMS Settlement Counsel believe that implementation of this framework and process can reasonably be expected to achieve the settlement of a significant proportion of the pending MDL 2325 cases.

Respectfully submitted,

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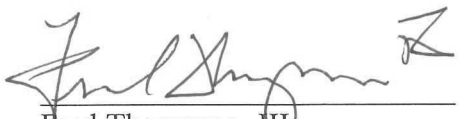

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CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2014, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the CM/ECF participants registered to receive service in this MDL.

By: */s/ Fred Thompson III*

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