

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into by and between the State of West Virginia *ex rel.* Patrick Morrissey, Attorney General (“the State”), and Defendants Johnson & Johnson, Medical Device Business Services, Inc. (f/k/a Depuy Inc., Depuy Orthopedics, Inc. and Depuy Orthopaedics, Inc.), Depuy Products, Inc., Depuy Synthes, Inc., Depuy Synthes Sales, Inc., Ethicon, Inc., a subsidiary of Johnson & Johnson, and Ethicon US LLC a subsidiary of Johnson & Johnson, (collectively Defendants, the “Settling Entities”), acting through their authorized representatives, hereinafter collectively referred to as “the Parties.”

Section I: Recitals

A. The State has indicated its intention to assert various claims (the “Potential Claims”), against Johnson & Johnson and against Medical Device Business Services, Inc. (f/k/a Depuy Inc., Depuy Orthopedics, Inc. and Depuy Orthopaedics, Inc.), Depuy Products, Inc., Depuy Synthes, Inc., and Depuy Synthes Sales, Inc. alleging deceptive and unlawful marketing, promoting and sale of the ASR XL Acetabular, ASR Hip Resurfacing, and Pinnacle Ultamet metal-on-metal hip replacement systems, or any parts thereof (the “Hip Products”) in violation of the West Virginia Consumer Credit and Protection Act, W.Va. Code §§46A-1-101, *et seq.*

B. The State has asserted various claims against Johnson & Johnson, Ethicon, Inc., and Ethicon US LLC alleging deceptive and unlawful marketing, promoting and sale of Ethicon’s past and current polypropylene pelvic mesh surgical devices intended for implantation into the pelvic floor to treat stress urinary incontinence (SUI) and/or pelvic organ prolapse (POP) (the “Mesh Products”), including Prolift, Prolift+M, Prosima, Prolene Mesh/Prolene Soft Mesh, Gynemesh, Gynemesh PS, TVT, TVT-Obturator, TVT-Secur, TVT Exact, TVT Abbrevo, and Artisyn, in violation of the West Virginia Consumer Credit and Protection Act, W.Va. Code §§46A-1-101, *et seq.*, as set forth in the Complaint filed on or about September 18, 2019, and

captioned *State of West Virginia ex rel. Patrick Morrissey, Attorney General v. Johnson & Johnson, et al.*, Monongalia County Civil Action No. 19-C-286 (the “Action”).

C. The Settling Entities deny the State’s allegations and, specifically, deny that they violated any applicable law or regulation or breached any legal duty to the State or its citizens in connection with the State’s claims or Potential Claims.

D. The Parties wish to fully and finally resolve the Potential Claims and the Action and to enter into a settlement to fully resolve all claims that the State may have against the Settling Entities related to the Hip Products and the Mesh Products, on the terms and conditions set forth below. In order to avoid the delay, inconvenience, and expense of litigation of the Potential Claims and the Action, and as a result of a mutual desire to settle their disputes, the Parties have reached a full and final settlement as set forth in this Agreement.

Section II: Terms and Conditions

The Parties, therefore, for good and valuable consideration (including the mutual promises, covenants, and obligations set forth in this Agreement), intending to be legally bound, agree as follows:

1. **INCORPORATION OF THE PREAMBLE.** The foregoing introductory paragraphs to this Agreement and Recitals are incorporated herein.
2. **EFFECTIVE DATE.** The “Effective Date” of this Agreement shall be the date of the last signature of the last signatory to this Agreement.
3. **RELEASE AND DISCHARGE BY THE STATE.** In consideration of the Settling Entities’ obligations in this Agreement and conditioned upon their full payment of the Settlement Amount (defined in Paragraph 4 below), the State (on behalf of itself and its agencies, departments, instrumentalities, officers, employees, servants, attorneys, and agents claiming through it) releases and forever discharges, to the fullest extent permitted by law, the Settling

Entities and all of their officers, directors, employees, representatives, agents, affiliates, parents, subsidiaries, assigns and successors (collectively, the “Released Parties”) of and from the following: all civil or administrative claims, actions, suits, charges, causes of action, arbitrations; debts, demands, obligations, damages (including compensatory and punitive damages), disgorgement, restitution, liens, fines, penalties, interest, costs, expenses, and attorneys’ fees, as may have been recoverable, whether arising from, in, or through law, equity, administrative procedures, subrogation, or any other source that the State (or its agencies, departments, instrumentalities, officers, employees, servants, attorneys, or agents), to the extent permitted by law, asserted or may have or could have asserted against the Released Parties by reason of any conduct occurring through and including this Agreement’s Effective Date, arising from or relating to the Hip Products or the Mesh Products, whether such conduct was known or unknown, claimed or concealed, suspected or unsuspected, fixed or contingent, or matured or un-matured (the “Released Claims”). The claims being released are those brought solely by the State and are wholly independent of any claims that individual users of the Hip Products or the Mesh Products may have against the Settling Entities.

The State (on behalf of itself and its agencies, departments, instrumentalities, officers, employees, servants, attorneys, and agents), to the extent permitted by law, further agrees to fully and finally release and refrain from instituting, recommending, directing, causing, or attempting to cause any administrative action or sanction, including debarment, by any State agency based on the conduct covered by this Paragraph.

4. **PAYMENTS BY THE SETTLING ENTITIES.** In consideration for the agreements, promises, and releases provided in this Agreement, the Settling Entities shall pay the State the total sum of Three Million Nine Hundred Thousand Dollars (\$3,900,000) (“Settlement

Amount” or “Settlement Payment”). The payment by the Settling Entities shall be made as follows: within thirty (30) business days following the execution of this document by all Parties and filing of the Voluntary Dismissal that dismisses Monongalia County Civil Action 19-C-286 with prejudice (as set forth in Paragraph 7 below), a payment of \$2,400,000. On May 1, 2021, a payment of \$1,000,000. On September 1, 2021, the final payment of \$500,000. This Agreement is the product of a compromise between the Settling Entities and the State, and the Settlement Amount is based on the Parties’ arms-length negotiations and respective assessments of numerous factors and issues relating to the Potential Claims and the Action.

The Settlement Payment may be used by the Attorney General for any one or more of the following purposes: direct and indirect administrative, investigative, compliance, enforcement, or litigation costs and services incurred for consumer protection purposes; to be held for appropriation by the Legislature; and/or distribution to taxpayers and/or consumers. In no event shall the Settling Entities have any responsibility, financial obligation, or liability whatsoever with respect to the distribution or administration of the Settlement Payment including, but not limited to, the costs and expenses of such distribution and administration.

5. **PAYMENTS TO NON-PARTIES BY THE STATE.** To the extent a third party not a party to this agreement (including, without limitation, the State’s outside counsel, the federal government or any federal agency, a *qui tam* relator, a private citizen, or a private insurer) claims entitlement to any portion of the Settlement Amount or to any other compensation in connection with the subject matter, investigation, or prosecution of the Action or the Potential Claims, the State shall be solely responsible for the proper allocation of those funds from the Settlement Amount.

6. **NO THIRD-PARTY BENEFICIARIES.** This Agreement is intended to be solely for the benefit of the Parties and persons and entities released, and, except as stated herein, the Parties do not by this Agreement release any claim against any other person or entity that purchased or purchases products from the Settling Entities. Except as stated herein, no word, term, phrase, or definition in this Agreement (including, without limitation, the Agreement itself or the Settlement Amount) is or may be used for the benefit of any person, private or governmental entity, or litigant who is not a signatory to, or released by, this Agreement.

7. **DISMISSAL OF ACTION.** Within three (3) business days following the execution of this document by all Parties, the State will file with the Circuit Court of Monongalia County a Voluntary Dismissal with Prejudice in the Action. Each Party to the Action will bear its own legal and other costs incurred in connection with the Action, including investigation and prosecution thereof, as well as the preparation and performance of this Agreement.

8. **NO ADMISSION OF LIABILITY OR WAIVER OF DEFENSES.** Nothing in this Agreement is to be construed as an admission or evidence of fault or liability on the part of the Settling Entities, all of which expressly deny fault and liability and deny that the State's Potential Claims and the claims asserted in the Action are valid. This Agreement shall not be construed or used as a waiver or limitation of any defense otherwise available to the Settling Entities in any other action, or of the Settling Entities' right to defend from, or make any arguments in, any private individual action, class claims or suits, or any other governmental or regulatory action relating to the subject matter or terms of this Agreement. This Agreement is made without trial or adjudication of any issue of fact or law or finding of liability of any kind. It is the intent of the Parties that this Agreement not be admissible in other cases or binding on the Parties in any respect other than in connection with the enforcement of the terms of this Agreement. The Parties

agree that the West Virginia Medicaid program suffered no actual harm or damages as a result of the conduct complained of by the State in the Action or the Potential Claims.

9. **EFFECT OF PAYMENT.** No part of the Settlement Payment represents payments for monies expended by the State of West Virginia's Medicaid Program, nor does it concern any payment made thereunder, nor does the Settlement Payment represent payments for any federal money or any state matching funds. Payment of the Settlement Amount by the Settling Entities will fulfill all obligations that this Agreement imposes on the Settling Entities. Payment of the Settlement Amount also is intended to, and does, fully resolve all of the State's claims or potential claims against the Settling Entities as provided in Paragraph 3.

10. **WARRANTY OF CAPACITY TO EXECUTE AGREEMENT.** The individuals signing this Agreement on behalf of the Settling Entities represent and warrant that they are authorized by the Settling Entities to execute this Agreement. The undersigned State signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement on behalf of the State through their agency. The individuals signing this Agreement on behalf of the State represent and warrant that they are authorized by the State to execute this Agreement. There is no other understanding or agreement, verbal or otherwise, in relation thereto, between the Parties except those herein expressly set forth. The undersigned signatories represent that no interest in any claim herein released has been assigned to any third party. No oral representations, warranties or inducements have been made to any party concerning this Agreement other than the representations, warranties, and covenants contained and memorialized herein. In addition, the Parties represent and warrant that they are not relying on any representations or warranties not contained in this Agreement.

11. **ASSISTANCE OF COUNSEL.** The Parties represent that they have had the assistance of counsel in negotiating, reviewing, and executing this Agreement and that they appreciate and understand the legal significance of this Agreement and the legal significance of stipulating to a dismissal with prejudice of the pending actions, all of which have been explained to them by their attorneys. The State understands the terms of this Agreement, understands its finality, and understands that it will never again, in any court anywhere, make any claim against Defendants for any declaratory or equitable relief, for any sums of money, or for any other form of compensation for the Released Claims. The Parties represent that they are not under duress or pressure from any source and they have executed this Agreement knowledgeably and freely by and with the advice of their attorneys. This Agreement shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Parties, it being recognized that this Agreement is the result of arm's-length negotiations between the Parties and all Parties have contributed substantially and materially to the preparation of this Agreement.

12. **TAX CUTS AND JOBS ACT OF 2017.** The State is independently responsible for fulfilling any and all obligations under 26 U.S.C. § 6050X, as enacted by the federal Tax Cuts and Jobs Act of 2017.

13. **CONFIDENTIAL MATERIALS.** The return, destruction or handling of Confidential Materials exchanged in the Action shall be governed by the terms of the Confidentiality Agreement signed on October 2, 2019.

14. **CAPTIONS.** The bold-faced paragraph captions in this Agreement are for convenience only and do not add to, detract from, or change the substantive language or terms of this Agreement.

15. **INVALIDITY**. The Parties agree that should any nonmaterial portion or portions of this Agreement be found void, unenforceable, or otherwise invalid by any court of competent jurisdiction after the exhaustion of all rights to appeal, this entire Agreement shall not be nullified, such invalid portion or portions shall be severed from this Agreement, and the remainder of the Agreement shall be enforced.

16. **WAIVER**. Waiver by any party of any breach of any provision of this Agreement shall not constitute a waiver of any other breach of that or any other provision of this Agreement.

17. **GOVERNING LAW AND CHOICE OF FORUM**. It is understood and agreed by the Parties that this document shall be governed and interpreted in accordance with the laws of the State of West Virginia. Any disputes concerning the meaning, interpretation, or enforcement of this Agreement shall be resolved by the Circuit Court of Monongalia County, West Virginia, which shall be the exclusive trial court forum for all proceedings involving or arising out of this Agreement.

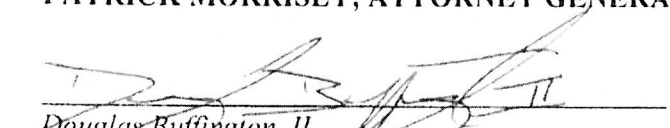
18. **ENTIRE AGREEMENT**. This document contains the entire agreement between the Parties with regard to the matters set forth herein, and shall be binding upon and inure to the benefit of all the successors, transferees, heirs, and assigns of the Parties. This Agreement is the exclusive, final, and complete agreement between the State and the Settling Entities. In executing this Agreement, each party represents and warrants that he or it is not relying on any representation that is not explicitly set forth in this Agreement. This Agreement may not be amended except by a writing signed by the State and the Settling Entities. It is expressly agreed, intended, and understood by the Parties that this Agreement is a complete accord and satisfaction of any and all claims the State has or may have had against the Released Parties.

19. **EXECUTION IN COUNTERPARTS**. This Agreement may be executed in counterparts, each of which constitutes an original, and all of which constitute one and the same Agreement. The Parties agree that facsimile or PDF signatures shall be deemed as effective as original signatures.

20. **ACTS NECESSARY TO EFFECTUATE AGREEMENT**. Each party agrees to perform such further acts and to execute and to deliver such further documents as may reasonably be necessary to carry out this Agreement.

Signed and Agreed to on the date below:

STATE OF WEST VIRGINIA *ex rel.*
PATRICK MORRISEY, ATTORNEY GENERAL,



Douglas Buffington, II
Senior Deputy Attorney General
On behalf of the State of West Virginia ex rel. Patrick Morrisey, Attorney General

Date: April 8, 2020

THE SETTLING ENTITIES:

Tina French
Assistant Corporate Secretary
On behalf of the Settling Entities

Date: _____

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PATRICK MORRISEY, ATTORNEY GENERAL,

Douglas Buffington, II
Senior Deputy Attorney General
On behalf of the State of West Virginia ex rel. Patrick Morrissey, Attorney General

Date: _____

THE SETTLING ENTITIES:

Renee Brutis
Assistant Corporate Secretary
On behalf of the Settling Entities

Date: 4/8/2020