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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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10 IN RE: Bard IVC Filters Products
11 Liability Litigation,
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No. MDL 15-02641-PHX-DGC
ORDER

15 The Court closed this MDL more than a year ago, after the primary purposes of the
16 MDL – coordinated pretrial discovery and resolution of common issues – had been
17 fulfilled. Doc. 18079. Thousands of cases in the MDL have settled and been dismissed.
18 More than two thousand cases have been remanded or transferred to appropriate districts.
19 The parties have until November 2, 2020, to settle and file stipulated dismissals for the
20 remaining Track 2 cases. Docs. 16343, 21518.

21 Counsel for certain Plaintiffs, Ramon Lopez at Lopez McHugh LLP, has filed a
22 motion to establish a “qualified settlement fund” as described in Treasury Regulation
23 § 1.468B-1 (“the Fund”), and to appoint a Fund Administrator. Doc. 21609. The proposed
24 Fund would be used to make payments under, and otherwise effectuate, the terms of an
25 undisclosed “Master Settlement Agreement.” *Id.* ¶¶ 5, 9; *see id.* ¶ 18 (“To the extent any
26 paragraphs in this Motion conflict or are in any way inconsistent with the terms and
27 conditions of the Master Settlement Agreement, the Master Settlement Agreement
28 controls.”). Mr. Lopez proposes that “[a]ll aspects of the administration of the Fund shall

1 remain subject to the jurisdiction of the Court until such time as the Fund has settled all
 2 eligible claims according to the terms of the Master Settlement Agreement.” *Id.* ¶ 5.
 3 Mr. Lopez further states that the proposed Fund Administrator – ARCHER Systems,
 4 LLC – will be indemnified and held harmless against all claims “except to the extent that
 5 it is finally determined by this Court that the Fund Administrator . . . was[] negligent or
 6 acted with willful misconduct in connection with the administration of [the] Fund.” *Id.*
 7 ¶ 7. Mr. Lopez anticipates the Court’s approval for distributions from the Fund “to the
 8 extent required by law for claims involving deaths and/or minors.” *Id.* ¶ 16. Mr. Lopez
 9 further anticipates that, from time to time, the Court will request reports related to the
 10 administration of the Fund. *Id.* ¶ 8.

11 The motion contains no explanation of the reason for the Fund, no discussion of the
 12 controlling Master Settlement Agreement, no legal citations suggesting that the Court has
 13 authority to create such a fund in a case like this, and few details about how the fund would
 14 be managed, how plaintiffs’ claims would be settled under the fund, how disputes would
 15 be resolved, whether Mr. Lopez’s clients have consented to creation of the fund and agree
 16 to be bound by its determinations, etc. The Court will require Mr. Lopez, by
 17 **October 9, 2020**, to file a supplemental memorandum attaching a copy of the Master
 18 Settlement Agreement and fully addressing the issues identified above and the following
 19 questions:

20 1. Why is a qualified settlement fund, as described in Treasury Regulation
 21 § 1.468B-1, required in order for the parties to settle the claims and effectuate settlement
 22 payments and releases?

23 2. What authority exists for establishing a qualified settlement fund in a case
 24 like this one, and why under any such authority should the Court establish a qualified
 25 settlement fund for Lopez McHugh and its clients?

26 3. Why should the Court exercise jurisdiction over any qualified settlement
 27 fund after the relevant cases have been dismissed from this MDL by the November 2, 2020
 28 deadline?

5. How, and under what specific circumstances, would the Court determine whether “the Fund Administrator . . . was[] negligent or acted with willful misconduct in connection with the administration of [the] Fund.” *Id.* ¶ 7. And what authority would the Court have to act if such a finding were made, given that the Fund Administrator is not a party to this case and no claims have been made against the administrator in this Court?

7. Who will ensure that the Fund “compl[ies] with the Treasury Regulations Section 1.468B-1 et seq. regarding taxation and tax reporting obligations,” and how will compliance be verified? *Id.* ¶ 6.

9. What is the expected life of the Fund, and why should the Court retain jurisdiction during that life given that this MDL proceeding is in its concluding stages?

Dated this 2nd day of October, 2020.

David G. Campbell

David G. Campbell
Senior United States District Judge