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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,

No. MDL 15-02641-PHX-DGC

12 **ORDER**
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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, Stuart Goldenberg at GoldenbergLaw PLLC, has filed
22 a 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. 21613. 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. Goldenberg proposes that “[a]ll aspects of the administration of the Fund

1 shall remain subject to the jurisdiction of the Court until such time as the Fund has settled
2 all eligible claims according to the terms of the Master Settlement Agreement.” *Id.* ¶ 5.
3 Mr. Goldenberg 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. Goldenberg anticipates the Court’s approval for distributions from the Fund “to
8 the extent required by law for claims involving deaths and/or minors.” *Id.* ¶ 16. Mr.
9 Goldenberg further anticipates that, from time to time, the Court will request reports related
10 to the 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. Goldenberg’s clients have consented to creation of the fund and
16 agree to be bound by its determinations, etc. The Court will require Mr. Goldenberg, 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:¹

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 GoldenbergLaw and its clients?

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28 ¹ The Court has required a similar memorandum regarding the motion to establish a
qualified settlement fund filed by the Lopez McHugh law firm. Docs. 21609, 21612.

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

4 4. How are settlements being handled for clients of GoldenbergLaw?
5 Specifically, how are the clients' interests being protected, have clients consented to
6 creation of the fund, how will disputes be resolved, and how will releases will be given?

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

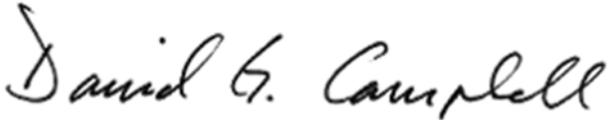
12 6. How, and under what specific circumstances, would the Court approve or
13 disapprove distributions from the Fund "for claims involving deaths and/or minors." *Id.*
14 ¶ 16.

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

18 8. When, and for what purpose, should the Court request reports related to the
19 administration of the Fund? *See id.* ¶ 8.

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

22 Dated this 2nd day of October, 2020.

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David G. Campbell
27 Senior United States District Judge
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