

# 2015 ASR SETTLEMENT AGREEMENT BENEFITS OVERVIEW

**Prepared by the Settlement Oversight Committee**

The 2015 ASR Settlement Agreement provides for three basic areas of compensation. The first is a Base Payment to all ASR Claimants (XL and resurfacing) who have undergone a revision surgery, removing the acetabular cup, between August 31, 2013 but prior to January 31, 2015. The second is for Claimants who have undergone a revision surgery in both their left and right hips (Bilateral Claimants). The third addresses patients who have suffered a variety of medical complications following a revision surgery (Extraordinary Injury Fund). A summary of these three (3) areas of benefits is outlined below.<sup>1</sup>

In addition, the Settlement provides for the resolution of healthcare insurance liens for medical costs that are directly associated with the revision surgery, at no additional cost to the claimant.

## BASE PAYMENT – CLAIMANTS WHO HAVE UNDERGONE AN ASR REVISION SURGERY

**Eligibility**

- Must be a United States patient defined as follows:

Patients	ASR Hip Implant Implanted Inside of the United States (as defined)	ASR Hip Implant Implanted Outside of the United States (as defined)
United States Citizen	Eligible	Not Eligible
United States Legal Resident	Eligible	Not Eligible

(See Settlement Agreement Section 2.1.1)

- Implantation of ASR XL or ASR Resurfacing (ASR Index Surgery).
- Revision (removal) surgery between August 31, 2013 but prior to January 31, 2015 and at least six (6) months after ASR Index Surgery.

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<sup>1</sup> If not represented by an attorney, see section on Unrepresented Claimants.

**Benefit**

Base Payment: \$250,000

Reductions: The Base Payment will be subject to certain reductions, the majority of reduction categories will result in additional funds for the Extraordinary Injury Fund (EIF) to further compensate Claimants.

- Duration of implantation (See Section 7.1.2)

180 days $\leq$ X < 5 years	\$250,000
5 years $\leq$ X < 6 years	\$225,000
6 years $\leq$ X < 7 years	\$200,000
7 years $\leq$ X < 8 years	\$150,000
8 years $\leq$ X < 9 years	\$100,000

All further reductions will be calculated after this “Duration of Implantation” reduction is taken. (See Section 7.3)

- Smoking at the time of Revision Surgery: 5% Reduction
- Body Mass Index (Height to Weight at Index Surgery) Reduction
  - BMI  $\geq$  35: 5%
  - BMI  $\geq$  40: 15%
  - BMI  $\geq$  50: 20%
- Death  $\leq$  5 years of Revision Surgery: 25% Reduction
- Age at the time of ASR Index Surgery Reduction
  - $\geq$  70 - 4%
  - $\geq$  75 - 8%
  - $\geq$  80 - 12%
  - $\geq$  85 – 15%
- ASR was not the Claimant’s initial implant: 5% Reduction

Exclusions:

Infection: Where infection was the “sole” cause of a patient’s revision surgery the patient will not be eligible to participate in the Settlement. This exclusion only applies to revisions that occur within 547 days (1.5 years) of initial implantation. The diagnosis of infection will require the satisfaction of specific criteria. These excluded claimants retain all rights in the legal system.

Trauma: Where trauma is the “immediate” cause of a Claimant’s revision surgery, the Claimant will not be eligible to participate in the Settlement, unless it is established that revision surgery would have been required in the “near term” regardless of the trauma. The Settlement Agreement specifies specific criteria for the diagnosis of trauma. (See Section 1.2.35)

## **BILATERAL ASR HIP REVISIONS**

The Bilateral ASR Fund is designed to compensate claimants who have undergone an ASR Revision Surgery on both the left and right hips between August 31, 2013 but prior to January 31, 2015. Claimants who have had only (1) of their (2) ASR implants removed shall retain all legal rights for the unrevised implant. (See Section 8.3.1)

### **Eligibility**

- Must qualify for a Base Payment Award
- Must have both left and right ASR implants removed between August 31, 2013 but prior to January 31, 2015

### **Benefit**

The second ASR revision - \$250,000 (the first ASR revision will be compensated pursuant to the Base Payment provisions) (See Section 8.3.3)

### **Reductions**

There will be no reductions to the Award for the second ASR revision surgery.<sup>2</sup> (See Section 8.3.3)

## **EXTRAORDINARY INJURY FUND (EIF)**

The Extraordinary Injury Fund (EIF) will compensate claimants for complications resulting from revision surgery.

### **Eligibility**

A claimant must qualify for a Base Payment to be eligible for an EIF award. Thereafter, specific criteria will determine what, if any, EIF Benefits will be awarded.

### **Benefit – PAST**

Claimants who suffer losses and/or injuries occurring prior to August 1, 2015 and related to their revision surgery may be entitled to Benefits.

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<sup>2</sup> If not represented by an attorney, see section on Unrepresented Claimants.

Benefit categories will include the following:

Re-Revision Surgery: The removal of a cup implanted during the ASR revision surgery or during subsequent re-revision surgeries on the same hip. (See Section 8.4.4.1)

Pulmonary Embolism and/or Deep Vein Thrombosis.

Dislocation of Implant

Foot Drop

Infection Post-Revision or Re-Revision

Myocardial Infarction

Stroke

Death

Miscellaneous: This category of Benefits will address losses and/or injuries related to revision surgery and not specifically addressed in other provisions of the settlement or anticipated. Lost wages may be considered under this category. (See Section 8.4.15)

**Benefit – FUTURE**

Eligible Claimants whose ASR was revised between August 31, 2013 but prior to January 31, 2015 and who suffer injuries and losses in connection with an ASR revision surgery that occur on or after August 1, 2015 but within two years of a revision surgery will be entitled to Benefits. The Benefit categories will be similar to those included in past EIF Benefits subject to certain time limitations. Future Benefits will be in amounts that are less than the amounts awarded for comparable past EIF claims.

**Reductions Past and Future**

EIF Benefits, past and future, will be subject to reductions for smoking, BMI and death within (5) years of the ASR revision surgery, as set forth in the Part B Award Schedule.

**Unrepresented Claimants**

The stated benefit amounts include funds to be paid as attorney fees. Claimants without lawyers should receive approximately the same net amount as claimants who have lawyers. The total payment to qualified unrepresented claimants will be equal to 71% of the stated benefits in acknowledgement of the fact that they do not have to pay attorneys' fees. There will be an additional Court approved deduction for common benefit fees and expenses. A Claimant need not be represented by a lawyer to submit a claim to the U.S. Program.