

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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HOCHSTADT, *et al.* :  
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v. : Case No.  
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BOSTON SCIENTIFIC CORPORATION, *et al.* : 08-CV-12139-DPW  
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**AMENDED STIPULATION AND AGREEMENT OF SETTLEMENT**

This Amended Stipulation and Agreement of Settlement (the "Amended Stipulation") is submitted in the above-captioned *Hochstadt, et al. v. Boston Scientific Corp., et al.*, No. 08-CV-12139-DPW (hereinafter, the "Instant Action"), pursuant to Rule 23 of the Federal Rules of Civil Procedure. Subject to the approval of the United States District Court for the District of Massachusetts (the "Court"), this Amended Stipulation is entered into among Named Plaintiff Edward Hazelrig, Jr. (the "Named Plaintiff") on behalf of himself, the Proposed Class, and the Boston Scientific Corporation 401(k) Retirement Savings Plan (the "Plan"), on the one hand; and Boston Scientific Corporation, James R. Tobin, Peter M. Nicholas, John E. Abele, Joel E. Fleishman, Ernest Mario, Ph.D., Uwe E. Reinhardt, John E. Pepper, Ursula M. Burns, Marye Anne Fox Ph.D., Ray J. Groves, N.J. Nicholas, Jr., Senator Warren B. Rudman, Lawrence C. Best, Robert G. MacLean, Lucia L. Quinn, Paul W. Sandman, Richard A. Duffy, Warren Clark III, Rose Marie Brana Haslinger, Jamie Rubin and John and Jane Does 1-10 (collectively, "Defendants"), on the other. The Amended Stipulation supercedes the earlier Stipulation and Agreement of Settlement dated December 1, 2009.

WHEREAS:

A. In early 2006, several putative class actions for violations of the Employee Retirement Income Security Act of 1974 (“ERISA”) were filed against one or more of the Defendants.<sup>1</sup> On April 4, 2006, the Honorable Joseph L. Tauro granted a motion to consolidate those actions (the “Fletcher/Lowe Action”).<sup>2</sup> On August 23, 2006, a Consolidated Class Action Complaint was filed before Judge Tauro. On November 3, 2008, Judge Tauro (i) after finding that the proposed class representatives, Douglas Fletcher and Michael Lowe, lacked Article III standing, denied the motion for class certification and dismissed the Fletcher/Lowe Action and (ii) denied Robert Hochstadt’s motion to intervene in the Fletcher/Lowe Action.<sup>3</sup> Messrs. Fletcher, Lowe, and Hochstadt appealed.<sup>4</sup>

B. On December 24, 2008, Robert Hochstadt and Edward Hazelrig, Jr. filed the Instant Action.<sup>5</sup> The Consolidated Class Action Complaint in the Fletcher/Lowe Action and the Complaint in the Instant Action are based on identical underlying allegations, and the defendants named in the Instant Action are the same defendants that are named in the Fletcher/Lowe Action. On June 5, 2009, Messrs. Hochstadt and Hazelrig filed a motion for class certification. On August 3, 2009, Defendants filed their opposition

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1 *Larson v. Boston Scientific Corp.*, No. 06-CV-10105-JLT; *Hochstadt v. Boston Scientific Corp.*, No. 06-CV-10159-JLT; *Klunke v. Boston Scientific Corp.*, 06-CV-10236-JLT; *Harvey v. Boston Scientific Corp.*, 06-CV-10265-RCL; *Lowe v. Boston Scientific Corp.*, 06-CV-10336-JLT; *Fletcher v. Boston Scientific Corp.*, 06-CV-10438-JLT.

2 *In re Boston Scientific Corp. ERISA Litig.*, No. 06-CV-10105-JLT.

3 *See In re Boston Scientific Corp. ERISA Litig.*, 254 F.R.D. 24 (D. Mass. 2008).

4 *In re Boston Scientific Corp. ERISA Litig.*, Appeal No. 08-CV-2568.

5 *Hochstadt, et al. v. Boston Scientific Corp., et al.*, No. 08-CV-12139-DPW.

to that motion. On October 1, 2009, plaintiffs in the Instant Action filed a reply to the Defendants' opposition.

C. The Fletcher/Lowe Action asserts claims under Sections 409 and 502(a)(2) and (3) of ERISA on behalf of the named plaintiffs in that action, on behalf of the Plan, and on behalf of a proposed class of participants for whose individual accounts the Plan held an interest in Boston Scientific common stock at any time between May 7, 2004 and January 26, 2006, inclusive. The Consolidated Class Action Complaint filed in the Fletcher/Lowe Action alleges breaches of the fiduciary duties of prudence and loyalty, the duty to disclose and inform, the duty to monitor, and the duty to avoid conflicts of interest.

D. Likewise, the Instant Action asserts claims under Sections 409 and 502(a)(2) of ERISA on behalf of the named plaintiffs in that action, on behalf of the Plan, and on behalf of a proposed class of participants for whose individual accounts the Plan held an interest in Boston Scientific common stock at any time between May 7, 2004 and January 26, 2006, inclusive. The Complaint filed in the Instant Action alleges breaches of the fiduciary duties of prudence and loyalty, the duty to disclose and inform, the duty to monitor, and the duty to avoid conflicts of interest.

E. To date, plaintiffs have produced documents to Defendants and have been deposed. Defendants and third parties have produced in excess of three million pages of documents that Plaintiffs' Counsel have been reviewing during the pendency of the Instant Action and the Fletcher/Lowe Action. Plaintiffs' Counsel have deposed several witnesses to date, including the Plan administrator and a consultant to the Plan. The Parties have also engaged expert witnesses in connection with class certification proceedings.

F. The Parties, Douglas Fletcher, and Michael Lowe reached an agreement in principle to settle both the Instant Action and the Fletcher/Lowe Action on September 11, 2009. The Settlement memorialized in this Amended Stipulation encompasses the Instant Action. Defendants and Douglas Fletcher and Michael Lowe are entering into a separate settlement agreement to resolve Fletcher and Lowe's individual claims, including dismissal of the currently-pending appeal of the Fletcher/Lowe Action. After Final Court approval of the Settlement, Defendants, Douglas Fletcher, and Michael Lowe will seek dismissal of the currently-pending appeal from the Fletcher/Lowe Action. As provided for at Paragraphs 8.1.4 and 8.2, the First Circuit's dismissal of that appeal with prejudice is a precondition to this Amended Stipulation having any effect.

G. Defendants deny any wrongdoing whatsoever with respect to the Instant Action or any other action, and this Amended Stipulation shall in no event be construed or deemed to be evidence of an admission or concession on the part of any Defendant with respect to any claim of any fault or liability or wrongdoing or damage whatsoever or any infirmity in the defenses that the Defendants have asserted or would assert.

H. The Parties recognize that the Instant Action has been prosecuted and defended in good faith, that the Instant Action is being voluntarily settled upon advice of counsel, and that the terms of the Settlement are fair, reasonable and adequate. This Amended Stipulation shall not be construed or deemed to be a concession by the Named Plaintiff of any infirmity in the claims asserted in the Instant Action or any other action, or deemed to be evidence of any such infirmity.

I. Plaintiffs' Co-Lead Counsel have conducted investigations relating to the claims and the underlying events and transactions alleged in the Instant Action (and in the Fletcher/Lowe Action). Counsel have analyzed the evidence adduced in connection with the Instant Action (and the Fletcher/Lowe Action), including during discovery, and have researched the applicable law with respect to the claims asserted and the potential defenses thereto.

J. Named Plaintiff, Douglas Fletcher, and Michael Lowe, through Plaintiffs' Co-Lead Counsel, conducted telephonic discussions and arm's length negotiations with Defendants' Counsel with respect to a compromise and settlement of both the Instant Action and the Fletcher/Lowe Action. These discussions and negotiations resulted in the execution of the Memorandum of Understanding on September 30, 2009, attached hereto as Exhibit A. The Memorandum of Understanding outlined the principal terms of a settlement of both the Instant Action and the Fletcher/Lowe Action.

K. Based upon their investigation, discovery, and negotiation, Named Plaintiff and Plaintiffs' Co-Lead Counsel have concluded that the terms and conditions of this Amended Stipulation are fair, reasonable and adequate to Named Plaintiff, the Plan and the Proposed Class, and are in their best interests. Named Plaintiff has agreed to settle the claims raised in the Instant Action pursuant to the terms and provisions of this Amended Stipulation, after considering (i) the substantial benefits that the Plan and members of the Proposed Class will receive from settlement of the Instant Action, (ii) the risks of litigation, and (iii) the desirability of permitting the Settlement to be consummated as provided by the terms of this Amended Stipulation.

NOW THEREFORE, without any admission or concession on the part of the Named

Plaintiff of any lack of merit of the Instant Action whatsoever, and without any admission or concession of any liability or wrongdoing or lack of merit in the defenses whatsoever by Defendants, it is hereby STIPULATED AND AGREED, by and between the parties to this Amended Stipulation, through their respective counsel, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the parties hereto from the Settlement herein set forth, that all Settled Claims, as against the Released Parties, and all Settled Defendants' Claims shall be compromised, settled, released and dismissed with prejudice, upon and subject to the following terms and conditions:

1. **DEFINITIONS**

As used in this Amended Stipulation, capitalized terms and phrases not otherwise defined herein have the meanings provided below:

1.1 "Administrator" means Gilardi & Co. LLC, the firm retained by Plaintiffs' Counsel to administer the Settlement.

1.2 "Alternative Judgment" has the meaning set forth in Paragraph 8.1.3.

1.3 "Amended Stipulation" means this Amended Stipulation and Agreement of Settlement.

1.4 "Boston Scientific" means Boston Scientific Corporation.

1.5 "Class Period" means, for the purposes of this Settlement only, the period of time between May 7, 2004 and January 26, 2006, inclusive.

1.6 "Court" means the United States District Court for the District of Massachusetts.

1.7 “Defendants” means (a) Boston Scientific and (b) all Persons named as defendants in the Instant Action, whether named personally or fictitiously (including the 401(k) Administrative and Investment Committee).

1.8 “Defendants’ Counsel” means the law firms of Shearman & Sterling LLP and Wilmer Cutler Pickering Hale and Dorr LLP.

1.9 “Effective Date” means the date, established pursuant to Paragraph 8.1, on which all of the conditions to settlement set forth in Paragraph 8.1 of this Amended Stipulation have been fully satisfied or waived and the Settlement becomes Final and unconditional.

1.10 “Escrow Agent” means the law firms of Milberg LLP and Harwood Feffer LLP.

1.11 “Fairness Hearing” means the hearing to be held by the Court to determine, among other things, whether to grant final approval to the Settlement, as contemplated by the form of Order for Notice and Hearing attached hereto as Exhibit B.

1.12 “Final,” with respect to any Judgment or Alternative Judgment or any other order or judgment of a court of competent jurisdiction, means: (a) if no appeal is filed, the expiration date of the time provided by the corresponding rules of the applicable court or legislation for filing or noticing of any appeal therefrom; or (b) if there is an appeal therefrom, the date of (i) final dismissal of such appeal, or the final dismissal of any proceeding on certiorari or otherwise to review the Judgment, Alternative Judgment, judgment or order; or (ii) the date of final affirmance on an appeal thereof, the expiration of the time to file a petition for a writ of certiorari or other form of review, or the denial of a

writ of certiorari or other form of review thereof, and, if certiorari or other form of review is granted, the date of final affirmance thereof following review pursuant to that grant. Any proceeding or order, or any appeal or petition for a writ of certiorari or other form of review pertaining solely to (i) any application for attorneys' fees, costs or expenses, and/or (ii) the Plan of Allocation, shall not in any way delay or preclude the Judgment or Alternative Judgment from becoming Final.

1.13 "Gross Settlement Fund" shall have the meaning set forth in Paragraph 3.2.

1.14 "Immediate Family" means parents, grandparents, children and grandchildren.

1.15 "Individual Defendants" means James R. Tobin, Peter M. Nicholas, John E. Abele, Joel E. Fleishman, Ernest Mario, Ph.D., Uwe E. Reinhardt, John E. Pepper, Ursula M. Burns, Marye Anne Fox Ph.D., Ray J. Groves, N.J. Nicholas, Jr., Senator Warren B. Rudman, Lawrence C. Best, Robert G. MacLean, Lucia L. Quinn, Paul W. Sandman, Richard A. Duffy, Warren Clark III, Rose Marie Brana Haslinger, Jamie Rubin and John and Jane Does 1-10.

1.16 "Judgment" shall mean the Judgment contemplated by Paragraph 7.1. A proposed form of the Judgment is attached hereto as Exhibit C.

1.17 "Named Plaintiff" means Edward Hazelrig, Jr..

1.18 "Net Settlement Fund" has the meaning defined in Paragraph 3.3 hereof.

1.19 "Notice" means the Notice of Proposed Settlement, Motion For Attorneys' Fees, Reimbursement of Expenses and Named Plaintiff's Case Contribution Award, and

Scheduling of Final Fairness Hearing, which is to be sent to members of the Proposed Class substantially in the form attached hereto as Exhibit 1 to Exhibit B.

1.20 “Order for Notice and Hearing” means the order directing notice of the Settlement to the Proposed Class substantially in the form attached hereto as Exhibit B.

1.21 “Participant” means any individual who is (1) a “participant,” as defined in 29 U.S.C. § 1002(7), (2) a “beneficiary,” as defined in 29 U.S.C. § 1002(8), of a deceased participant, or (3) an alternate payee under a qualified domestic relations order, as defined in 29 U.S.C. § 1056(d)(3).

1.22 “Parties” means the Named Plaintiff and the Defendants.

1.23 “Person” means an individual, partnership, corporation, governmental entity or any other form of entity or organization.

1.24 “Plaintiffs’ Co-Lead Counsel” means the law firms of Milberg LLP and Harwood Feffer LLP.

1.25 “Plaintiffs’ Counsel” means Plaintiffs’ Co-Lead Counsel and Barroway Topaz Kessler Meltzer & Check, LLP, Law Offices of Alfred G. Yates, Jr., Major Khan LLC, Moulton & Gans, P.C., Scott + Scott LLP, Stull, Stull & Brody, and The Weiser Law Firm, P.C.

1.26 “Plan” means the Boston Scientific Corporation 401(k) Retirement Savings Plan.

1.27 “Plan of Allocation” means a plan of allocation of the Net Settlement Fund, to be proposed by Plaintiffs’ Co-Lead Counsel and approved by the Court. Plaintiffs’ Co-Lead Counsel’s proposed Plan of Allocation is attached hereto as Exhibit D. The

proposed Plan of Allocation is not a necessary term of this Amended Stipulation and it is not a condition of this Amended Stipulation that any particular Plan of Allocation be approved by the Court.

1.28 “Predecessor” means as to any Person (the “Subject Person”), another Person as to whom the Subject Person is a Successor-in-Interest.

1.29 “Proposed Class” means, for the purposes of this Settlement only, a proposed non-opt-out class consisting of all Participants in the Plan for whose individual accounts the Plan held an interest in Boston Scientific common stock at any time during the Class Period. Excluded from the Proposed Class are Douglas Fletcher, Michael Lowe, Defendants, members of the Defendants’ Immediate Families, any officer, director or principal stockholder of Boston Scientific under Section 16 of the Securities Exchange Act of 1934, any entity in which a Defendant has a controlling interest, and their heirs, Successors-In-Interest, or assigns (in their capacities as heirs, Successors-In-Interest, or assigns).

1.30 “Proposed Class Member” means a member of the Proposed Class.

1.31 “Publication Notice” means the summary notice of proposed Settlement and hearing for publication substantially in the form attached hereto as Exhibit 2 to Exhibit B.

1.32 “Released Parties” means any and all of the Defendants, every Person who, at any time during the Class Period, was a director, officer, employee or agent of Boston Scientific or a trustee or fiduciary of the Plan, together with, for each of the foregoing, any Predecessors, Successors-In-Interest, present and former Representatives, direct or indirect

parents and subsidiaries, affiliates, insurers, co-insurers, re-insurers, consultants, administrators, employee benefit plans, investment advisors, investment bankers, underwriters, and any Person that controls, is controlled by, or is under common control with any of the foregoing.

1.33 “Representatives” means attorneys, agents, directors, officers, and employees.

1.34 “Settled Claims” means any and all claims, debts, demands, rights or causes of action, suits, matters, and issues or liabilities whatsoever (including, but not limited to, any claims for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, including both known claims and Unknown Claims, against any of the Released Parties, (i) that have been asserted in the Instant Action or the Fletcher/Lowe Action or (ii) that could have been asserted in any forum, in connection with the Plan’s holding an interest in Boston Scientific common stock in an individual account at any time during the Class Period and which arise out of or are based upon the allegations, transactions, facts, matters, occurrences, or claimed representations or omissions out of which any of the claims asserted in the Instant Action or the Fletcher/Lowe Action arise. Notwithstanding the foregoing, “Settled Claims” does not include any claims, rights or causes of action or liabilities whatsoever (i) related to the enforcement of the Settlement, including, without limitation, any of the terms of this Amended Stipulation or orders or judgments issued by the courts in connection with the

Settlement or confidentiality obligations; (ii) under ERISA Section 502(a)(1)(B) for individual or vested benefits brought by an individual Plan participant or beneficiary where such claims are unrelated to any claim, matter or cause of action that has been asserted in the Instant Action or the Fletcher/Lowe Action or that could have been asserted in the Instant Action or the Fletcher/Lowe Action and do not arise out of and are not based upon the allegations, transactions, facts, matters, occurrences, or claimed representations or omissions out of which the claims asserted in the Instant Action or the Fletcher/Lowe Action arise, or (iii) under Section 10(b) and 20(a) of the Exchange Act of 1934, 15 U.S.C. §§ 78j(b) and 78t(a), and the rules and regulations promulgated thereunder, including SEC Rule 10b-5, 17 C.F.R. § 240.10b-5, and which are being asserted in the action entitled *In re Boston Scientific Corporation Securities Litigation*, D. Mass. No. 1:05-cv-11934 (DPW).

1.35 “Settled Defendants’ Claims” means any and all claims, rights or causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known claims and Unknown Claims, that have been or could have been asserted in the Instant Action or any forum by the Defendants or any of them or the Successors-In-Interest and assigns of any of them against the Named Plaintiff, any Proposed Class Member or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Instant Action. Settled Defendants’ Claims does not include claims, rights or causes of action or liabilities related to the enforcement of the Settlement, including, without limitation, any of the terms of this Amended Stipulation or orders or judgments issued by the courts in connection with the Settlement or confidentiality obligations.

