

**Supplemental Determination by the Independent Fiduciary for the
Proposed Settlement in *Hochstadt v. Boston Scientific Corp.***

This determination supplements the Report of the Independent Fiduciary for the Proposed Settlement in *Hochstadt v. Boston Scientific Corp.* (the “Report”). All defined terms used in the Report have the same meaning herein.

Fiduciary Counselors has now reviewed the Plaintiff’s Motion for Award of Attorneys’ Fees, Reimbursement of Expenses and Case Contribution Award. Plaintiff’s counsel have requested an attorney fee award of \$2,733,060, which is 33 1/3 percent of the \$8,200,000 Gross Settlement Fund. Plaintiff counsel’s lodestar (normal fees multiplied by hours worked on the case), which includes the ERISA I Case is \$9,925,656.65, resulting in a lodestar multiplier of 0.275. The Settlement effectively resolves both the ERISA I Case and the instant Litigation. Plaintiff’s Counsel have represented that the work performed in the ERISA I Case had an undeniable and critical impact on Counsel’s ability to settle both actions, and the work performed in prosecuting the ERISA Case I was not duplicated in the instant Litigation. Plaintiff’s Counsel presented lodestar and expense information based on both actions and believe it is appropriate for the Court to consider this information in assessing the request for attorneys’ fees and reimbursement of expenses. Fiduciary Counselors believes this approach is reasonable. Further, using only the lodestar from the instant Litigation, the multiplier is slightly below 1. Although 33.33% of the Settlement Fund is toward the high end of the generally accepted range, it does not seem unreasonable in light of the fractional multiplier. Fiduciary Counselors maintains the ERISA Class Action Settlement Clearinghouse (www.erisasettlements.com) and compiles data on ERISA class actions. The anticipated percentage requested and the lodestar multiplier are within the range of attorney fee awards for similar ERISA cases. Fiduciary Counselors finds the attorneys’ fees to be reasonable.

Plaintiff’s Counsel also requested an expense reimbursement of \$475,000 based on expense submissions totaling \$489,093.78. After discussions with counsel, we understand that the expense reports will be reduced to eliminate a small amount of duplication and to account for a refund, but still will exceed the \$475,000 requested. Expenses as originally submitted were \$261,464.95 in the ERISA I Case and \$227,628.83 in the present Litigation. Again, the rationale for recovering costs for both cases is appropriate and the range of expenses is reasonable.

Plaintiff’s counsel has requested an award of \$5,000 to Edward L. Hazelrig Jr., the Named Plaintiff in this Litigation. This award is within the range of similar awards in ERISA cases. Based on the settlements for which we have data on named plaintiff awards, most named plaintiff awards in ERISA cases are \$10,000 or less. Additionally, the Named Plaintiff award is not material in comparison to the total settlement amount and is reasonable.

Sincerely,



Stephen Caflisch
Deputy General Counsel
Fiduciary Counselors Inc.