

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

**IN RE: C. R. BARD, INC., PELVIC REPAIR
SYSTEM PRODUCTS LIABILITY LITIGATION**

MDL NO. 2187

**PRETRIAL ORDER # 214
(ORDER RE: QUALIFIED SETTLEMENT FUND –
BARD – ANDRUS WAGSTAFF)**

Pending is an Unopposed Motion to Administer Settlements Resolving Cases and Claims of Andrus Wagstaff, P.C. Plaintiffs, filed April 29, 2016 [ECF No. 1912], by Andrus Wagstaff, P.C. (“AW”), as counsel for certain Plaintiffs in this MDL 2187. Defendant, C. R. Bard Inc. (“Bard”) (AW and Bard, together, the “Parties”) has provided its consent. The motion seeks entry of an Order to aid in the efficient processing and administration of a confidential settlement agreement (the “Settlement Agreement”) between AW and Bard to resolve the claims of those certain Plaintiffs (clients of) AW, as against Bard, relating to the implant of Bard pelvic mesh products.

In particular, the Motion seeks an Order: (1) approving an Escrow Agreement (the “Escrow Agreement”), Exhibit A, which creates the AW TVM Settlement Fund (the “Settlement Escrow”), (2) where the Court retains continuing jurisdiction and supervision over the Settlement Escrow, and (3) determining that the Settlement Escrow constitutes a “qualified settlement fund” within the meaning of Section 468B of the Internal Revenue Code of 1986, as amended (the “Code”) and its accompanying Treasury Regulation Sections 1.468B-1 *et seq.*

The Court, having reviewed the Motion and the Escrow Agreement, and finding good and sufficient cause, **FINDS** and **ORDERS** as follows:

- 1) The Motion is **GRANTED**.

- 2) The terms of the Escrow Agreement are approved.
- 3) The Settlement Escrow constitutes a qualified settlement fund within the meaning of Section 468B of the Internal Revenue Code of 1986, as amended, and its accompany Treasury Regulations under Section 1.468B-1 *et seq.*
- 4) The Court will retain continuing jurisdiction and supervision over the Settlement Escrow, following the terms of the Escrow Agreement.
- 5) Seventh Amendment Holdings, LLC shall serve as Escrow Agent, pursuant to agreement of the parties. The Escrow Agent shall administer the Settlement Escrow pursuant to the terms and conditions of the Escrow Agreement.
- 6) CITIBank N.A will serve as the Custodian that will hold the funds subject to the Escrow Agreement, pursuant to agreement of the parties.

The court DIRECTS the Clerk to file a copy of this order in 2:10-md-2187 and it shall apply to each member related case previously transferred to, removed to, or filed in this district where applicable, which includes counsel in all member cases up to and including civil action number 2:16-cv-04116. In cases subsequently filed in this district, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each new action at the time of filing of the complaint. In cases subsequently removed or transferred to this court, a copy of the most recent pretrial order will be provided by the clerk to counsel appearing in each new action upon removal or transfer. It shall be the responsibility of the parties to review and abide by all pretrial orders previously entered by the court. The orders may be accessed through the CM/ECF system or the court's website at www.wvsd.uscourts.gov.

ENTER: May 3, 2016

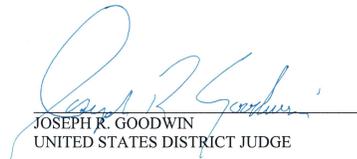

JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

EXHIBIT A

Bard SETTLEMENT FUND ESCROW AGREEMENT

This Escrow Agreement (hereinafter referred to as "Agreement") pertains to the aggregate settlement of the claims arising from 374 Claimants, including those who have filed actions in federal court in West Virginia – *In Re: C. R. Bard, Inc., Pelvic Repair System Products Liability Litigation* (MDL No. 2187), and is made and entered into, on the last date signed below, by and among:

1. Vance Andrus and Aimee Wagstaff (hereinafter referred to as "Claimants' Counsel") on behalf of all Claimants identified pursuant to the Master Settlement Agreement between Andrus Wagstaff, PC and C. R. Bard, Inc. (hereinafter referred to as "MSA") executed on February 2, 2016;
2. C. R. Bard, Inc. (hereinafter referred to as "Defendant" or "Bard"); and
3. Seventh Amendment Holdings, LLC, or its successors designated in accordance with this Agreement (hereinafter referred to as "Escrow Agent").

WHEREAS, the Defendant, C. R. Bard, Inc. and Claimants' Counsel have entered into an MSA; and

WHEREAS, Defendant has agreed to pay the sum set forth in the MSA (hereinafter referred to as "Settlement Proceeds") into escrow in order to, pending satisfaction of the other terms and conditions of the MSA, fully and completely extinguish any potential liability of Defendant;

WHEREAS, the MSA sets forth the terms and conditions: (i) governing the creation of a "qualified settlement fund" (as defined in Treas. Reg. § 1.468B-1(a)); and (ii) governing the deposit of the Settlement Proceeds into that fund by Defendant to be retained therein and distributed therefrom in accordance with the terms of the MSA;

WHEREAS, a qualified settlement fund has been established and is called the BARD Settlement Fund (hereinafter referred to as the "QSF");

WHEREAS, the Escrow Agent has agreed to serve as trustee, administrator and escrow agent for the QSF;

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements contained herein, the parties hereby agree as follows:

1. Incorporation and Primacy of the MSA. The terms and conditions of the MSA are incorporated herein, in their entirety, by reference. Each party hereto agrees to perform the duties and obligations of such party as set forth in the MSA. To the extent that there is any inconsistency between the terms of the MSA and this Agreement, the terms of the MSA shall control.

2. Appointment of and Acceptance by the Escrow Agent. Consistent with the terms of

the Court order, Claimants' Counsel hereby appoints the Escrow Agent to serve as the "administrator" (as defined in Treas. Reg. § 1.468B-2(k)(3)) and escrow agent for the QSF. The Escrow Agent hereby agrees to serve as the administrator and escrow agent for the QSF.

3. Intent and Purpose of the QSF. The QSF is being established pursuant to order of the Court to resolve or satisfy one or more contested claims that have resulted or may result from an event (or a related series of events) that has occurred and that has given rise to at least one claim asserting liability arising out of a tort, breach of contract or violation of law. The QSF is subject to the continuing jurisdiction of the Court and is intended to qualify as a "qualified settlement fund" as defined in Treas. Reg. § 1.468B-1(a). The purpose of the QSF includes, but is not necessarily limited to, (i) receiving, holding, and investing contributions from Defendant, (ii) implementing settlement agreements in accordance with their terms, and (iii) distributing amounts in accordance with such settlement agreements.

4. No Authority to Conduct Business. The purpose of the QSF is limited to the matters set forth in Paragraph 3 hereof, and this Agreement shall not be construed to confer upon the Escrow Agent any authority to carry on any business or activity for profit.

5. Deposit. Upon execution of this Agreement by all parties hereto and in accordance with the terms of the MSA, the Settlement Proceeds (hereinafter referred to as the "Deposit") shall be delivered to the Escrow Agent to be held by the Escrow Agent in accordance with the terms and conditions of this Agreement, the MSA and any further order of the Court. Subject to and in accordance with the terms and conditions of this Agreement, the MSA and any further order of the Court, the Escrow Agent agrees that it shall receive, hold in escrow, and release or distribute the Deposit. All interest and other earnings on the Deposit shall become a part of the Deposit for all purposes.

6. Investment of the Deposit. Unless otherwise ordered by the Court, all monies received by the QSF, which include all principal and interest earned thereon, shall be deposited by the Escrow Agent, without need for bond, in a custodial agency account held at Citibank, N.A. ("Bank"), for the benefit of and titled in the legal name of the QSF and invested in instruments/securities comprised of (a) United States Agency, Government Sponsored Enterprises or Treasury securities or obligations (or a mutual fund invested solely in such instruments); (b) cash equivalent securities including SEC registered money market funds and money market mutual funds; and/or (c) non-interest bearing corporate accounts subject to unlimited Federal Depository Insurance Corporation guarantees under recent banking and security regulations, but only for so long as there is unlimited FDIC insurance covering the settlement funds; or (d) the Citibank: Market Deposit Account, a dollar for dollar interest bearing deposit obligation of the Bank, insured to the applicable limits. The Fund shall be established at Citibank, N.A., a financial institution doing business in New York, NY, according to the above terms and conditions, and the Bank shall

invest and reinvest monies held in the custodial account, following the Bank's receipt of written instructions received from the Fund Administrator pursuant to these terms and conditions, such that the following investment policy is implemented: (1) safety of principal; (2) zero bank balance exposure; and (3) the use of zero sweep disbursement accounts to ensure funds remain in custody or in fully insured accounts to avoid an impermissible risk of loss should the financial institution holding the funds fail.

Notwithstanding the foregoing, the Bank shall not be allowed to distribute any income or principal from the QSF except upon instructions of the Escrow Agent, pursuant to the MSA, or, if requested, upon the order of the Court upon the joint motion of the parties. The Escrow Agent retains the right to remove the Bank with or without cause, in its sole and absolute discretion and will provide the Bank with written notice thereof. The Escrow Agent may designate a replacement bank upon the written consent of Claimants' Counsel and such information will be forwarded to the Bank. In the event of such replacement, the terms and conditions of this Paragraph 6 - including, without limitation, those addressing bond requirements, investments, and distributions from the QSF shall apply to any such replacement bank. The Escrow Agent shall not be liable for any losses as a result of investing the Deposit as directed by the Court. Any such losses shall not be recoverable from the parties, and the parties and their counsel shall have no responsibility for the Escrow Agent's performance. Receipt and/or investment of the Deposit shall be confirmed to Claimants' Counsel by the Escrow Agent as soon as practicable by account statement or other reasonable method.

7. Claimants' Interests in the Deposit. The Deposit is the sole property of the QSF. This Agreement shall not operate to make any portion of the Deposit available to Claimants in any fashion, except as specifically set forth in the MSA. To the extent possible, the terms of this Agreement shall be construed so as to prevent Claimants from being in constructive receipt, as determined under federal income tax principles, of any amounts held by the QSF prior to the time when the funds allocated to an individual Claimant's settlement have been released from the QSF in accordance with the matrix described at paragraph 2 of the motion to establish the QSF and as set forth in the MSA.

8. Restriction on Release of Funds. Notwithstanding anything herein to the contrary, no funds allocated to an individual Claimant's settlement may be released from the QSF until the terms and conditions of the MSA have been satisfied.

9. Disbursement of the Deposit. The Escrow Agent shall make disbursements of the Deposit and all interest earned thereon only in accordance with the MSA and/or any future order of the Court. Such disbursements may take the form of lump sum distributions and/or periodic payments. Notwithstanding the foregoing, the Escrow Agent shall establish non-interest bearing custodial accounts in the name of the QSF.

9a. Complex Disbursement requests. The escrow agent shall make disbursements in accordance with express written authorization from counsel of record, and will also make every effort to coordinate the proper funding of Special Needs Trusts, Asset Protection Trusts, Pooled Special Needs Trusts, repayment of Non-Recourse Funding Agreements and any other "non - Cash" disbursements requests that may be made of the escrow

agent, should such request be made and requested in accordance with this agreement.

10. Structured Settlements. Any structured settlement shall be issued by a life insurance company that is rated A+ or better by A.M. Best Company.¹ Claimants entering into structured settlement agreements with the Escrow Agent shall agree in writing to a discharge of the QSF's obligation to make any structured settlement payments (also known as periodic payments) by executing, along with the QSF, any necessary documents required or related to the discharge of said obligation. Unless otherwise directed, the Escrow Agent will use a broker of its own selection in its sole discretion. The Escrow Agent expressly agrees there will be no fees, costs, expenses or charges to the Deposit in connection with any arrangement and payment of a periodic payment on behalf of a claimant. The decision by some Claimants as to structured settlements shall not preclude others from, as promptly as possible, receiving a **lump** sum cash award.

a. Qualified Assignment.

The Escrow Agent may make a "qualified assignment," within the meaning of Internal Revenue Code § 130(c), of the obligation to make any periodic payments to such assignee(s) (hereinafter referred to as "Assignee") as the Court may designate, or, if none is so designated, as selected by the Escrow Agent; provided, however, that any such Assignee must not be related (within the meaning of Internal Revenue Code § 267(b) or § 707(b)(I)) to Defendants, including any liability insurance carrier for Defendants.

b. Claimants' Agreement.

To the extent the Escrow Agent assigns to Assignee its obligations to make any periodic payments, Claimants hereby agree to Assignee's assumption of the Escrow Agent's obligation to make the periodic payments, waive any right of rejection, and agree that the assignment shall completely release and discharge the Escrow Agent from the assigned obligation of making the periodic payments. Claimants recognize that, in the event of such an assignment, Assignee shall be the sole obligor with respect to the assigned periodic payment obligation.

c. Assignee's Funding of Periodic Payments.

Assignee shall have the right to fund the obligation to make the periodic payments through the purchase of an annuity policy or policies; provided that the annuity policy shall meet the requirements of a "qualified funding asset" within the meaning of Internal Revenue Code § 130(d); and provided further that each qualified funding asset purchased by the insurance or annuity company must relate to an obligation to Claimants to make periodic payments. Assignee shall be the sole owner of each annuity policy and shall

¹ Structured settlement payments are assigned to a qualified assignee by entering into qualified assignments of such structured settlement payments within the meaning of section 130 (c) of the Internal Revenue Code. The qualified assignment shall, respecting each person who is to receive periodic payments under a settlement agreement, purchase one or more qualified funding assets within the meaning of section 130(d) of the Internal Revenue Code to fund any structured settlement payments assigned to the qualified assignee.

have all rights of ownership therein. Claimants shall have no right of ownership in any such annuity policy.

d. Payments.

Assignee may have any such insurance or annuity company mail payments directly to the appropriate payee. Claimants shall be responsible for maintaining a current mailing address for the appropriate payee with each insurance or annuity company.

e. Limitations on Claimants' Right to Periodic Payments.

With respect to any periodic payments to be made to Claimants, Claimants acknowledge and agree that:

(1) None of the periodic payments may be accelerated, deferred, increased, or decreased by Claimants or by any payee; and

(2) Neither Claimants nor any payee shall have the power to sell, mortgage, encumber, or anticipate the periodic payments, or any part thereof, by assignment or otherwise; and

(3) The obligation of any Assignee to make the periodic payments shall be no greater than that of the Escrow Agent immediately preceding the assignment of the periodic payment obligation.

11. Reports and Accounting.

Upon request, the Escrow Agent will prepare and deliver Fund Statements ("Statements") to Claimants' Counsel, Guardian ad Litem, Defendant, and/or the Court. The Statements shall include a statement of receipts, investment earnings, interest, and disbursements. The Escrow Agent shall provide the Statement no later than ten (10) business days following the request.

12. Tax Matters.

The Escrow Agent shall obtain a federal Taxpayer Identification Number for the QSF. All taxes on the income of the QSF and expenses and costs incurred in connection with the taxation of the QSF (including, without limitation, the expenses of tax attorneys and accountants) shall be paid out of the QSF, shall be considered to be a cost of administration of the settlement, and shall be paid as instructed by the Escrow Agent. Each party hereto agrees to perform the duties and obligations of such party as set forth in the MSA. The parties agree the terms and conditions of the MSA, including Section V.M., together with this Paragraph 12, shall govern the tax treatment of the QSF. Upon receipt of the Deposit, the Escrow Agent shall promptly take all steps necessary for qualifying the QSF as a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1 and in accordance with the MSA. These obligations include, without limitation, the following:

a. Regulation § 1.468B-3 Statement.

The Escrow Agent will prepare a "Regulation § 1.468B-3 Statement" pursuant to Treas. Reg. § 1.468B-3(e) on behalf of Defendant and provide copies to Defendant's counsel for review and approval. The "Regulation § 1.468B-3 Statement" may be a joint statement as permitted under Treas. Reg. § 1.468B-3(e) (2)(ii).

b. Regulation § 1.468B-1 Relation Back Election.

If required, the Escrow Agent will prepare and attach to the income tax return of the QSF a "Regulation § 1.468B-1 Relation Back Election" pursuant to Treas. Reg. § 1.468B-1G for execution by Defendant and the Escrow Agent. The Escrow Agent will forward a copy of the "Regulation § 1.468B-1 Relation Back Election" to Defendant promptly after filing the same.

c. Income Tax Returns.

The Escrow Agent will timely and properly prepare and file on behalf of the QSF: (i) federal tax, information and withholding returns in accordance with Treas. Reg. § 1.468B-2 and the other provisions of the Internal Revenue Code of 1986, as amended; and (ii) all necessary state and local tax returns.

d. Defendant's Reimbursement Rights.

Notwithstanding any effort or failure of the Escrow Agent, the parties hereto and/or any claims administrator to treat the QSF as a "qualified settlement fund" within the meaning of Treas. Reg. § 1.468B-1 effective as of the date hereof, if Defendant incurs any Taxes, as that term is defined in the MSA, or additional tax liability, interest, penalties or other tax-related losses of any kind (such tax liability, interest, penalties and/or losses hereinafter collectively referred to as "Tax Detriments") resulting from income earned by the QSF or any deferral in the effective date of Defendant's income tax deduction for the Deposit (or any accrued interest thereon payable to the ultimate beneficiaries of the QSF), then Defendant shall in each case be entitled to reimbursement out of the QSF in the amount of such Taxes and/or Tax Detriments, upon Defendant's written request to the Escrow Agent. The Escrow Agent is authorized to make payment of any reimbursements described in this Paragraph 12.d.

e. Notwithstanding any other provision of this Agreement, the parties hereto acknowledge and agree that Defendant has made no representations or warranties regarding the tax consequences under the MSA and this Agreement and shall have no liability to the Claimants, the Escrow Agent or any other party with respect to matters related to such tax consequences. Further, this Agreement and the MSA shall be binding on the parties hereto, and shall continue to apply, notwithstanding the tax consequences under this Agreement and the MSA.

13. Limitation of Defendant's Liability.

Defendant and its counsel and insurers shall have no obligation and incur no liability

whatsoever with respect to the distribution and administration of the QSF. Following the contribution to the QSF, Defendant and its counsel and insurers shall have no further obligation to contribute to the QSF and no further obligation to Claimants.

14. Payment to Claimants' Counsel.

The Escrow Agent shall be authorized to distribute all attorney fees and litigation expenses to Claimants' Counsel, consistent with existing contingency fee contracts, fee split agreements between Claimants' Counsel, and to the extent required by law.

15. Compensation and Reimbursement of Expenses.

The Escrow Agent shall receive compensation following the terms of the January 14, 2016 Scope of Services agreement sent to Claimants' Counsel; provided, however, that the fees of, and expenses reasonably incurred by, the Escrow Agent in performing its obligations or enforcing its rights hereunder, including reasonable attorney's fees, shall be paid solely from and charged to and paid from the income earned on the Deposit by the Escrow Agent without prior notice. Where such income is insufficient, the Escrow Agent's fees and expenses described above and as provided in the Scope of Services agreement, may be charged against the Deposit (principal).

16. Reliance.

The Escrow Agent shall have the right to rely upon any affidavit, certificate, letter, notice, electronic mail or other document believed by the Escrow Agent to be genuine and sufficient, and upon any other evidence believed by the Escrow Agent, in its reasonable judgment, to be genuine and sufficient, which may be provided to the Escrow Agent by Claimants' Counsel.

17. Termination.

Upon final distribution of all of the Deposit, the Escrow Agent shall take appropriate steps to wind down the QSF and thereafter be discharged from any further responsibility with respect to the QSF. Upon completion of such disbursement of all of the Deposit and such winding down as specified herein, this Agreement shall terminate.

18. Resignation or Removal of the Escrow Agent.

The Escrow Agent may resign hereunder upon approval of the Court or may be removed, with or without cause, by Claimants' Counsel, at any time by the giving of thirty (30) days prior notice to the Escrow Agent. Upon the effective date of such resignation or removal, the Escrow Agent shall deliver the Deposit to the substitute escrow agent designated by the Court, at which time the Escrow Agent's obligations hereunder shall cease and terminate. A copy of each instrument of resignation, removal, appointment and acceptance of appointment shall be attached to an executed counterpart of this Agreement in the custody of the Court.

19. Notices.

Any notice instrument, or other communication required or permitted to be given by one of the parties to the other under this Agreement, shall be considered as properly given if in writing and: (i) delivered against receipt therefore; or (ii) mailed by registered or certified mail, return receipt requested, and postage prepaid; or (iii) sent by overnight courier, expenses prepaid; or (iv) sent by email, telex, telecopy, facsimile or prepaid telegram, in each case addressed as follows:

If to the Escrow Agent:
John T. Bair, Fiduciary
Seventh Amendment Holdings, LLC
737 Main Street
Buffalo, New York 14203
jbair@milestoneseventh.com

If to Claimants or Claimants' Counsel:
Vance R. Andrus, Esq. and
Aimee Wagstaff, Esq.
Andrus Wagstaff
7171 W Alaska Dr.
Lakewood, CO 80226
vance.andrus@andruswagstaff.com
aimee.wagstaff@andruswagstaff.com

If to Bard, to:

Scott T. Lowry
Vice President and Treasurer
C. R. Bard, Inc.
730 Central Avenue
Murray Hill, NJ 07974
scott.lowry@crbard.com

Kenneth H. Zucker, Esq.
Pepper Hamilton LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103
zucker@pepperlaw.com

All notices given in accordance herewith shall be deemed to have been received by the parties to whom such notices are directed: (i) upon delivery, if delivered personally or sent by telex, telecopy, facsimile, telegraph, or electronic mail; or (ii) three days after the date of transmittal thereof, if sent by registered or certified mail; or (iii) one business day after being deposited with the overnight courier. Any party to this Agreement may change the address to which such communications are to be directed by giving written notice to the other parties.

20. No Third Party Beneficiaries.

This Agreement is for the exclusive benefit of the parties hereto and their respective permitted successors hereunder, and shall not be deemed to give, either express or implied, any legal or equitable right, remedy, or claim to any other entity or person whatsoever.

21. Consultation with Legal Counsel.

The Escrow Agent may consult with counsel satisfactory to it concerning any question relating to its duties or responsibilities hereunder or otherwise in connection herewith and, except with respect to matters set forth in Paragraph 12, shall not be liable for any action taken, suffered, or omitted by it in good faith upon the advice of such counsel.

22. Choice of Laws: Cumulative Rights.

This Agreement shall be construed under, and this Agreement and the Deposit shall be governed by, the laws of the State of Colorado. All of the Escrow Agent's rights hereunder are cumulative of any other rights it may have by law or otherwise.

23. Severability.

If one of the provisions herein shall for any reason be held to be invalid, illegal, or unenforceable in any respect under applicable law, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

24. Headings.

The headings used herein are for reference only and shall not affect the construction of this Agreement.

25. Agreement May Be Executed in Counterparts.

This Agreement may be executed in counterparts, whether by original, facsimile or electronic signature, all of which taken together shall constitute one and the same Agreement.

26. Entire Agreement.

This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement, and there are no other written or oral agreements, understandings or arrangements except as set forth herein. The terms of this Agreement may not be modified or waived except in writing signed by all of the parties hereto.

27. General.

This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, devisees, executors, administrators, personal representatives, permitted successors, trustees, receivers, and permitted assigns. Neither the existence of this Agreement nor the disbursement of the Deposit or any portion thereof shall be construed or interpreted as a limitation or waiver of any rights, remedies, or claims any of the parties hereto may have under any agreement, at law, in equity, or otherwise.

AGREED this _____ day of _____, 2016:

John Bair, As authorized agent of Seventh Amendment Holdings,
LLC (Escrow Agent)

Vance R. Andrus, Esq.
(Claimants' Counsel)

Aimee Wagstaff, Esq.
(Claimants' Counsel)

Scott T. Lowry
(on behalf of Bard)