

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

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

MDL No. 2187

THIS DOCUMENT RELATES TO ALL CASES

**PRETRIAL ORDER # 202
(Order Re: Motion to Appoint Special Master Professor Lynn A. Baker)**

Pending is an Unopposed Motion to Appoint Special Master, filed November 6, 2015. [ECF No. 1693]. Janet, Jenner & Suggs, LLC (“Plaintiffs’ Counsel”) has entered into a Confidential Master Settlement Agreement (the “MSA”) with Defendants Covidien,¹ to resolve the claims related to the implantation of Covidien’s Pelvic Repair Products, as defined in the MSA, for certain plaintiffs in *In Re: C. R. Bard, Inc. Pelvic Repair Systems Products Liability Litigation*, MDL 2187 (S.D. W.Va.), *In Re: Tyco/Covidien Transvaginal Mesh Litigation*, MICV2012-03700-N (Mass. Sup. Ct.), *In Re: Pelvic Mesh Litigation/Bard, Superior Court of New Jersey Law Division – Atlantic County Docket No. ATL-L-Master Docket No., L-6339-10-CT, Civil Action Bard Litigation*, Case No. 292 CT (N.J. Super. Ct.). Pursuant to the provisions of the MSA, Plaintiffs’ Counsel has moved the court to appoint a Special Master to perform certain defined functions related to the administration and implementation of the Settlement Agreement. Professor Lynn A. Baker is well-qualified to perform these and other functions discussed below.

¹ “Covidien” shall mean Covidien LP, Tyco Healthcare Group LP, Covidien Holding Inc., Covidien Inc., Covidien plc, United States Surgical Corporation, Sofradim Production, Tissue Science Laboratories, Limited, Medtronic Inc., and Medtronic plc, and their related and affiliated companies.

Accordingly, Plaintiffs' Counsel request, pursuant to the court's inherent case management powers, the appointment of Professor Lynn A. Baker to assist in the administration and implementation of their settlement with Covidien, with the authority to:

- Review, and revise as appropriate, the calculation, allocation, division and distribution of settlement payments among the claimants to ensure that fair and reasonable compensation is afforded each claimant based on the facts and circumstances of this litigation, including the risk to all parties of litigation, the cost, the time delay, the medical evidence, the science, the compensation circumstances, and the inherent risk of litigation generally;
- Serve as facilitator to aid in the resolution of any disputes that may arise related to the categorization and allocation of settlement values to claims under the terms of the Settlement Agreement;
- Serve as the final decision-maker on any and all Appeals asserted by claimants to the proposed settlement allocation.

Covidien does not oppose Plaintiffs' Counsel's request. The court, pursuant to its inherent authority, and having considered the request, and cognizant of the important public policy of encouraging settlement among litigating parties, hereby issues the following Order.

IT IS ORDERED THAT:

1. The Unopposed Motion to Appoint Special Master is **GRANTED**;
2. Lynn A. Baker, Austin Law and Economics Consultants, Inc., 3101 Lating Stream Lane, Austin, TX 78746, is hereby appointed as the Special Master for the administration of the settlement reached between Janet, Jenner & Suggs, LLC, and Covidien, related to the implantation of Covidien's Pelvic Repair Products, as defined in the Settlement Agreement.

3. The duties of the Special Master are set forth above. A purpose of this Order is to provide all parties and their counsel with notice of the availability of the Special Master to assist in the process of settling claims related to Covidien Pelvic Repair Products.
4. The Special Master shall be compensated privately by all claimants for services rendered to them. The fees of the Special Master shall be subject to the review of the court upon written request of any party or of the Special Master.
5. Upon entry of this Order, the Special Master shall be retained on behalf of the settling claimants with claims against Covidien related to its pelvic repair system products to perform the duties as set forth in herein.
6. An affidavit by the Special Master has been submitted and is attached hereto as Exhibit A.
7. The Special Master shall report to the court as requested by the court.

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, which includes counsel in all member cases up to and including civil action number 2:15-cv-15496. 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.wvsc.uscourts.gov.

ENTER: November 24, 2015


JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

**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

AFFIDAVIT OF LYNN A. BAKER

LYNN A. BAKER, being duly sworn, deposes and says:

1. I am a member of the Bars of the States of Texas (active) and Arizona (inactive) and of the United States Supreme Court. I am in good standing.

2. I hold the Frederick M. Baron Chair in Law at the University of Texas School of Law, where I have taught since 1997, and where I also serve as Co-Director of the Center on Lawyers, Civil Justice, and the Media. I have also been a professor at the University of Arizona College of Law (1992-1997), and have been a visiting professor at Columbia University Law School (1997) and at Rutgers (Camden) University Law School (1997). I began my academic career teaching at the University of Virginia School of Law from 1986 to 1992. Prior to that, I served as a law clerk to Judge Amalya L. Kearsse on the United States Court of Appeals for the Second Circuit in Manhattan (1985-86). I am a 1985 graduate of Yale Law School, where I served as an Article & Book Review Editor of the YALE LAW JOURNAL.

3. As a law professor, one of my principal academic interests has been ethical issues in group litigation and settlement, including issues surrounding the allocation of settlement proceeds. I regularly teach a survey course on Professional Responsibility, which includes substantial discussion of these issues. I also often teach a seminar (titled "Mega-settlements") which focuses on large-dollar, complex settlements, and which involves extended, in-depth

discussion of allocation issues in both mass tort and class action settings. I have frequently appeared as an invited speaker on these issues at symposia, conferences, and continuing legal education programs. My scholarly publications on these issues include: *I Cut, You Choose: The Role of Plaintiffs' Counsel in Allocating Settlement Proceeds*, 84 Va. L. Rev. 1465 (1998) (with Charles Silver); *Mass Lawsuits and the Aggregate Settlement Rule*, 32 Wake Forest L. Rev. 733 (1997) (with Charles Silver); and *The Aggregate Settlement Rule and Ideals of Client Service*, 41 S. TEX. L. REV. 227 (1999) (with Charles Silver). These publications have been cited by numerous commentators and courts, and in leading treatises including the ALI's PRINCIPLES OF AGGREGATE LITIGATION (2010).

4. I have served as an expert or consultant on ethical and/or allocation issues in dozens of large-dollar, large-group settlements, including the BP class action settlement in the U.S. District Court for the Eastern District of Louisiana, the \$4.5 billion nationwide Vioxx settlement in 2007, and the \$1.27 billion nationwide Fen-Phen class action settlement (Seventh Amendment) in 2006, numerous settlements involving various other pharmaceuticals and medical devices (including trans-vaginal mesh, Fosamax, NuvaRing, Risperdal, hip replacement products, Prozac, Yaz/Yasmin, hormone replacement therapy, Paxil, Avandia, Seroquel, Gadolinium, Rezulin, Zyprexa, Ortho Evra, Bextra, Celebrex), and many settlements involving asbestos, silica, MTBE, and other toxins. I have served as an expert in various settlements in connection with *In re WorldCom, Inc. Securities Litigation*, and in connection with class action settlements in twelve states involving alleged wage and hour violations by Wal-Mart.

5. I previously testified in the United States District Court for the Middle District of Pennsylvania as an expert regarding the fairness and reasonableness of the \$17.75 million settlement fund allocation plan in connection with the class settlement, involving more than

3,000 class members, with the Mericle Defendants, approved by that Court on December 14, 2012. See Wallace v. Powell, 288 F.R.D. 347, 371 (M.D. Pa. 2012). See also Wallace v. Powell, 301 F.R.D. 144, 163 (M.D. Pa. 2014) (related \$2.5 million class settlement with the Provider Defendants, in which I provided an expert report regarding the fairness and reasonableness of the settlement fund allocation plan).

6. I have thoroughly familiarized myself with the issues involved in the case captioned above, and as a result of my knowledge of that case, I can attest and affirm that I am aware of no grounds for disqualification that would prevent me from serving as a Special Master in the above captioned matter. I have reviewed the pleadings, medical information and scientific information pertaining to mesh cases generally and specifically as it relates to the litigation involving Covidien manufactured products. I will use the information gathered and my experience in performing my duties as Special Master.



Lynn A. Baker 11/6/2015