

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

CHARLESTON DIVISION

IN RE: AVAULTA PELVIC SUPPORT SYSTEMS
PRODUCTS LIABILITY LITIGATION

MDL No. 2187

THIS DOCUMENT RELATES TO ALL CASES

PRETRIAL ORDER # 10

(Stipulated Case Management Order Regarding Joint Records Collection)

Based upon the stipulation and agreement of the parties it is hereby **ORDERED** as follows:

1. The parties to this litigation hereby agree to jointly use The Marker Group, Inc. ("Marker Group") to collect for the parties jointly certain medical and other records from any third party designated as a records custodian by either Plaintiffs or Defendants. Plaintiff(s) agree to provide the agreed upon releases to Marker Group, and any party may request that Marker Group obtain records from a custodian by so advising Marker Group. Marker Group shall make such records available to all parties as provided in the Plaintiffs' Grace Period To Review Records for Privilege, a copy of which is attached hereto as Exhibit A, which shall satisfy any obligation of a party obtaining records through Marker Group to make such records available to other parties. Plaintiffs shall not object to the form, execution or issuance of the agreed upon releases to third parties. To the extent any provider requires a release other than the agreed-upon release, provided there is no objection to the form of such release, the plaintiffs are required to complete the provider-specific authorization form within a reasonable amount of time. All communications with the Marker Group regarding cases in this litigation shall copy liaison counsel for the opposing party.

2. The parties have agreed that the Plaintiffs shall have a period of ten days, as defined in the Plaintiffs' Grace Period to Review Records for Privilege agreement, to review medical records for privilege before Defendants shall have access to the records. The parties' agreement is attached hereto as Exhibit A.

3. The parties agree that 50% of the total shared costs associated with records collection from each medical provider (or other custodian) will be paid by the plaintiffs and the other 50% by the Bard defendants. The scope and cost of services that will be shared by the parties are set forth in Exhibit B to this Stipulation. Each party is free to request any of the ancillary services offered by Marker Group at its own expense. The menu and pricing of such services is reflected in Exhibit C.

4. The parties agree document custodians will complete an agreed upon certificate of acknowledgment which will serve as evidence of authenticity and satisfy the requirements of authentication necessary to admit the records into evidence in this action. Any other evidentiary objections are reserved, and any party has the right to offer proof that the certified documents are not complete or otherwise inaccurate.

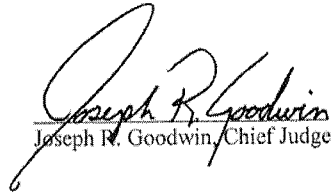
5. Any party may choose to discontinue the use of the joint vendor, Marker Group, at any time upon thirty (30) days notice to the other party(ies). The withdrawing party will remain responsible for the costs of any records ordered prior to the withdrawal.

6. Each party reserves the right to issue subpoenas or seek commissions and/or employ other discovery requests if necessary or appropriate in order to obtain records.

The court **DIRECTS** the Clerk to file a copy of this order in 2-10-md-2187 and it shall apply to each member Avaulta-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 2-11-

cv-00383. 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: June 7, 2011



Joseph R. Goodwin
Joseph R. Goodwin, Chief Judge

EXHIBIT A

PLAINTIFFS' GRACE PERIOD TO REVIEW RECORDS FOR PRIVILEGE

1. Certain medical and other records requested by the Parties will be secured by an outside vendor, The Marker Group ("Marker"), until such time as the agreement to secure the records through that vendor is revoked as provided in the Stipulated Case Management Order Regarding Joint Records Collection. Plaintiffs will request all pathology specimens and all portions of explanted mesh products and shall provide reports of such to Defendants. Plaintiffs will properly store and maintain all such materials and shall make originals of such materials available for inspection by Defendants upon reasonable notice. Marker will instruct medical providers to provide relevant radiographic material in electronic format only, if possible.
2. Authorizations for the release of records. Plaintiffs shall provide agreed upon authorizations for the release of medical, insurance, employment, Medicare, Medicaid, Social Security records and any other relevant authorization forms agreed to by the parties. In the event that an institution, agency, or medical provider to whom any authorization is presented refuses to provide records in response to the authorizations Plaintiff provides, the parties' vendor will notify the parties (according to its contract with the parties) and the individual Plaintiff's attorney shall attempt to resolve the issue with the provider, such that the necessary records are promptly provided. The parties' vendor will obtain records and post them to a secure database, accessible to the appropriate individuals for all parties, according to the parties' contract with the vendor

and the parties' agreement for a 10 day grace period for Plaintiffs to review documents in advance of such posting.

3. Plaintiffs shall provide dated authorizations, applicable for one year from the date of execution by Plaintiffs. Plaintiffs shall have the responsibility of obtaining new releases from any Plaintiff whose authorizations are more than eleven months old and will have the responsibility to promptly obtain new releases for any Plaintiff for whom a provider objects to the age of the authorization within fifteen (15) days of notice of such objection by a provider. In the event that dated authorizations become an impediment to prompt obtaining of records generally, the parties will meet and confer to discuss the provision and protection of undated authorizations. Signed authorizations constitute permission for the parties' vendor to obtain records from records custodians.
4. Upon receipt of records, Marker will provide the documents to Plaintiffs for review for privilege.
5. Marker will notify designated individuals in plaintiffs' and defense counsel's office (via "delivery receipt" confirming the notification was sent to the designated counsel's server) that documents have been deposited, by sending an automated email indicating that documents have been posted for the plaintiffs' review on Marker's website. Plaintiffs' counsel will have 10 days to review the documents. Designated representatives for Plaintiffs' counsel shall mean: Tammy Tiller at Blasingame Burch Garrard Ashley, P.C., email address: tdt@bbgbalaw.com. Designated representatives for defense counsel shall mean: Taylor T. Daly, Esq. (taylor.daly@nelsonmullins.com) and Maria Turner (maria.turner@nelsonmullins.com) at Nelson Mullins Riley & Scarborough, LLP; Sandra Bresnick, Esq. (sandrabresnick@quinnemanuel.com) and

Judith Devieux (judithdevieux@quinnemanuel.com) at Quinn Emanuel Urquhart & Sullivan, LLP; and Tiffany Killoren (tkilloren@shb.com) and Casey Kirk (ckirk@shb.com) at Shook, Hardy & Bacon, LLP. The parties reserve the right to modify these designations by providing written notice to Marker.

6. During the 10 days for review, Plaintiffs' counsel will identify any document, or any portion of a document, to which it believes a privilege exists and provide written notice to designated individuals for the defense group and to Marker of same. The ten day period will be keyed off of regular business hours (e.g. for documents posted after 5 p.m., the review period will extend to the 11th day.) Saturdays, Sundays and holidays will not be included in the 10 day period. Marker will include the deadline for the 10 day review period in the automated email posting to the Plaintiffs referenced in Paragraph 5 of this Agreement. In the event Marker posts a large number of documents for Plaintiffs to review, and Plaintiffs' counsel in good faith believes that 10 days are not sufficient for review of such documents, the parties will confer in good faith on the extension of the 10 day period as to those documents. If the parties are unable to agree, the Plaintiffs will apply to the Court for relief during the 10 day period.
7. Absent notification to Marker of a claimed privilege, agreement to extend a deadline, or request for relief to the court within the 10 day review deadline, Marker will automatically produce the entire document on the 11th day.
8. If a privilege is claimed, then Plaintiffs' counsel will, within five additional days, produce to Defendants an agreed upon privilege log in an email format agreed to by the parties identifying the privileged documents, the privilege claim and any documents, or

portions thereof, that Plaintiffs will be redacting, and shall submit the log to defense counsel. Contemporaneously with producing a privilege log, Plaintiffs will produce to Marker the redacted documents, and instruct Marker in writing to either make the redacted documents available to both parties on Marker's website or to withhold from Defendants the entire set of records based upon Plaintiffs' claim of privilege until further notice.

9. "Clawback" Procedure. In the event Plaintiffs inadvertently fail to claim a legal privilege they contend protects certain medical documents from disclosure to the Defendants, Plaintiffs may instruct Marker, via written notice copied to Defendants, to remove the documents to which Plaintiffs claim a privilege from Marker's website and ask Marker to instruct the Defendants to destroy the designated records. The terms of the Clawback Procedure, more fully set forth in Paragraph II(B)(12) of the parties' proposed Protective Order, shall apply to this Agreement upon entry of the proposed Protective Order.
10. The parties will work together in good faith to the extent necessary to modify the time tables set forth in this order.
11. The parties will confer on any privilege claims and, if not resolved, submit the issue to the court for determination.
12. The parties are entering into this procedure in good faith with the expectation it will protect the interests of all parties; however, if the procedure proves problematic to the parties or to Marker, the parties will submit a new approach to the court.

**EXHIBIT B
PRICING**

Shared Cost Services	Fee
Retrieval via Authorization – Records, Films, Pathology <i>Flat fee per location/provider. Includes research, collection of documents, certification, six follow-up attempts, etc.</i>	\$36.00
Retrieval via Authorization – Additional Records, Films, Pathology <i>Flat fee per location/provider. Pursuit of ongoing treatment records to supplement previous collections.</i>	\$20.00
Website Access <i>24/7 access to case files, records and reporting available at Markers Online.</i>	No Cost
Digital Copy with OCR <i>Per page fee for scanning, converting and uploading digital records to website. With OCR text recognition.</i>	\$0.10
Non-Record Copy <i>Per page fee for posting non-record documents to our website. (i.e. authorizations, legals, requests, etc.)</i>	\$0.10
Color Imaging <i>Per page fee for scanning, imaging, labeling and posting color documents, photographs or other images.</i>	\$0.80
Shipping and Postage	At Cost
Long Distance	At Cost
Custodian Fees	At Cost
Extensive Follow-up <i>Flat fee per location for follow-up attempts in excess of six.</i>	\$5.00
Bates Label Setup <i>One-time fee for setup of unique bates label code to be affixed to records as they are scanned and uploaded to the website.</i>	\$250.00

EXHIBIT C
MENU OF OPTIONAL ANCILLARY SERVICES

	Fee
PDF Document Preparation <i>Per PDF fee upon client request for records to be emailed.</i>	\$15.00
Medical Chronology and Summarization <i>Hourly fee.</i>	\$120.00
CD/DVD of Records <i>Per CD fee for reproduction of records on CD upon client request. Includes cost of CD.</i>	\$25.00
Hard Copies of Records (Blowbacks) <i>Per page fee for producing hard copies of scanned and uploaded documents or images.</i>	\$0.10
Color Copies Per Page <i>Per page fee for hard copies of color images.</i>	\$1.00
VHS Duplication <i>Per tape fee for reproduction of echocardiogram or other diagnostic testing provided in VHS format. Includes cost of video box.</i>	\$15.00
Compact Disk Duplication <i>Per CD fee for reproduction of films provided in digital format. Includes cost of CD case.</i>	\$25.00
Digital Display of Films <i>Per image fee for posting electronic diagnostic testing materials online for 24x7 access and ability to download.</i>	\$10.00
X-Ray Reproduction <i>Per film fee for reproduction and labeling of films. Also includes X-Ray envelopes and sleeves.</i>	\$15.00
X-Ray Handling Per Film	\$1.00
X-Ray Envelopes <i>Per envelope fee.</i>	\$2.00
Pathology Handling Per Set <i>Per slide fee for processing slides.</i>	\$1.00
Pathology Boxes (Sm) <i>Per box fee for use in protective storage of pathology materials.</i>	\$20.00
Special Project <i>Hourly fee charged for client requests for special programming, reporting or manual compilation of case/project data.</i>	\$40.00
Data Mining (Records Analysis) <i>Flat fee per set of records or case documents mined for new providers. Efficient review of documents to identify additional providers. Includes posting of these providers and related data to website.</i>	\$30.00
Preservation Letters <i>Flat fee per letter issued requesting that custodian preserve all diagnostic testing materials.</i>	\$18.00
Original Record Storage <i>Per box per month fee for secure storage of original documents.</i>	\$5.00
Preparation and/or Issuance of Subpoena	\$55.00
Subpoena Service by Markers	\$50.00
Subpoena Service by Third Party	Cost + 10%
Officer Certification or Federal Filing Fee	\$20.00