

**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 2187

**PRETRIAL ORDER # 240
(Order On Plaintiff's Unopposed Motion To Create The Fleming, Nolen & Jez,
LLP., Covidien Qualified Settlement Fund)**

Fleming, Nolen & Jez, L.L.P. and Participating Law Firms ("Plaintiffs' Counsel"), as counsel for certain plaintiffs and certain additional plaintiffs in *In Re: C. R. Bard, Inc., Pelvic Repair Systems Products Liability Litigation*, MDL 2187 (S.D. W.Va.), have moved the court for entry of an Order to aid in the efficient processing and administration of a Confidential Master Settlement Agreement (the "Settlement Agreement") between Defendant Covidien and Plaintiffs' Counsel to resolve the claims of certain claimants against COVIDIEN relating to COVIDIEN pelvic mesh products. [ECF No. 2945]. In particular, this Motion seeks an Order (1) approving the establishment of a Settlement Escrow account (the "Settlement Escrow") attached as Exhibit A; (2) retaining 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 ("Code") and Treasury Regulation sections 1.468B-1, *et seq.*

The court, having reviewed the Motion, and finding good and sufficient cause therefore, hereby **FINDS** and **ORDERS** as follows:

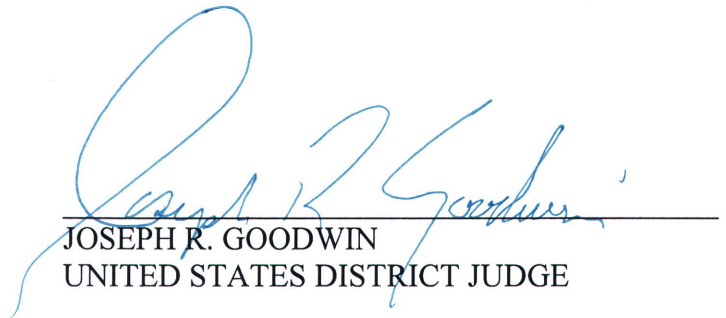
- 1) The Motion is **GRANTED**;

- 2) The Settlement Escrow, including any subaccounts thereof, together constitutes a single qualified settlement fund within the meaning of section 468B of the Internal Revenue Code of 1986, as amended (the “Code”) and Treasury Regulations sections 1.468B-1. *et seq.*;
- 3) The court approves the Settlement Escrow and the Escrow Agreement attached as Exhibit A to Plaintiffs’ Counsel’s Motion;
- 4) The court further retains continuing jurisdiction and supervision over the Settlement Escrow, in accordance with the terms of the Settlement Agreement;
- 5) The court approves of the appointment of Compass Bank to serve as the Escrow Agent (“Escrow Agent”) and retains continuing jurisdiction over the Escrow Agent. The Escrow Agent shall administer the Settlement Escrow in accordance with the terms of the Settlement Agreement and/or Parties. Further, the funds held by the Escrow Agent in the Settlement Escrow shall be disbursed by the Escrow Agent only pursuant to and in conformance with the terms of the Settlement Agreement and/or Parties; and
- 6) The Settlement Escrow, by and through the Escrow Agent, is authorized to establish sub-accounts (with leave of court) and purchase and assign structured settlements.

The court **DIRECTS** the Clerk to file a copy of this order in 2:10-md-2187 and it shall apply to each member case, where applicable, previously transferred to, removed to, or filed in this district, which includes counsel in all member cases up to and including civil action number 2:17-cv-01236. 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.wvwd.uscourts.gov.

ENTER: February 10, 2017



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

**QUALIFIED SETTLEMENT FUND ESCROW AGREEMENT
FOR THE 468B QUALIFIED SETTLEMENT FUND FOR THE
FLEMING, NOLEN & JEZ, LLP., COVIDIEN
QUALIFIED SETTLEMENT FUND**

THIS QUALIFIED SETTLEMENT FUND ESCROW AGREEMENT (this "Escrow Agreement," as the same may be amended) is made and entered into as of February ____, 2017, by and among:

Fleming, Nolen & Jez, LLP. (the "Firm"), and 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., Medtronic plc ("Covidien") and/or C. R. Bard, Inc. ("Bard") to the extent that it sold or distributed a Covidien Pelvic Repair Products (collectively, "Covidien") (the Firm and Covidien are sometimes referred to collectively as the "Parties"), and Compass Bank,, an Alabama state-chartered bank with its principal offices in Birmingham, Jefferson County, Alabama (the "Bank").

WITNESSETH:

- A. The Firm represents various plaintiffs (the "Plaintiffs") in litigation (the "Litigation") against Covidien in various courts, including in the multi-district litigation *In re: C.R. Bard, Inc. Pelvic Repair Systems Products Liability Litigation*, MDL No. 2187 (the "Court").
- B. The Plaintiffs and Covidien, pursuant to a CONFIDENTIAL MASTER SETTLEMENT AGREEMENT ("Confidential Master Settlement Agreement") by and between Plaintiffs and Covidien. have agreed to settle certain cases in the Litigation using a "qualified settlement fund" as defined in Treasury Regulations Section 1.468B-1, and have agreed that Covidien will deposit all settlement proceeds relating to the Litigation in an escrow account, maintained pursuant to this Escrow Agreement, to be styled " Fleming, Nolen & Jez, LLP., Covidien Qualified Settlement Fund" (the "Fund") naming the Bank as escrow agent for the Fund.
- C. It is the intent of the Parties that all steps be taken by the Parties so that the Fund may qualify as, and remain, a "qualified settlement fund" within the meaning of Section 468B of the Internal Revenue Code and Treasury Regulations promulgated under said Section 468B. It is agreed Covidien is properly classified as a "transferor" within the meaning of Treasury Regulations Section 1.468B-1(d)(1).
- D. The Bank has agreed to serve as escrow agent for the Fund.
- E. The purpose of the Fund is to provide a means by which Covidien can satisfy the Plaintiffs' personal injury claims asserted or that could have been asserted in the Litigation as well as to facilitate the payments of certain public liens on the amounts paid in the settlement in accordance with the terms of the Confidential Master Settlement Agreement.

G. The court order authorizing the qualified settlement fund (the "Order") shall direct the Escrow Agent (defined below) to hold the settlement proceeds relating to the Cases in the Fund, until requested by the Firm and said requests have been approved by Covidien to disburse the proceeds, in accordance with the terms of the Confidential Master Settlement Agreement.

H. All notices and/or communication sent to the Escrow Agent from the Firm shall simultaneously be sent to Covidien.

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

1. *Intent and Purpose.* The Fund is being established pursuant to the Order for the principal purpose of resolving and satisfying present and future claims of the Plaintiffs against Covidien arising out of personal injuries resulting from surgeries involving "Pelvic Repair Products." The Order permits Covidien to extinguish its tort liability with respect to Plaintiffs' claims arising out of personal physical injuries resulting from or in connection with "Pelvic Repair Products," meaning any and all medical devices designed, manufactured, marketed, sold, and/or distributed by Covidien and indicated and/or used for the treatment of Stress Urinary Incontinence ("SUI") and/or Pelvic Organ Prolapse ("POP"), including, but not limited to, the following products and their predecessor and successor products: Avaulta™ Anterior Biosynthetic Support System; Avaulta™ Posterior Biosynthetic Support System; Ugytex® Dual Knit Posterior Repair System; Ugytex® Dual Knit Anterior Repair System; Ugytex® Mesh; Uretex® TO Urethral Support System (include TO2 and TO3); Uretex® Self-Anchoring Urethral Support System; Pelvitex™ Polypropylene Mesh; Pelvicol® Acellular Collagen Matrix; PelviSoft® Acellular Collagen Matrix; PelviLace™ Biourethral Support System; IVS Tunneller™ Intra-Vaginal Sling (IVS-02, IVS-03); Obturator IVS Tunneller™; Surgipro™ Polypropylene Surgical Mesh; Permacol® Surgical Implant; Parietene® Polypropylene Mesh; Parietex® Composite; and Parietex® Prosup. Products manufactured by C. R. Bard, Inc. are specifically excluded from this definition.

All sums deposited in the Fund constitute damages on account of personal injuries or sickness in a case involving physical injury or physical sickness (other than punitive damages) within the meaning of Sections 104(a)(2) and 130(c) of the Code. The Fund is intended to qualify as a "qualified settlement fund" as defined in Treas. Reg. 1.468B-1(c).

2. *Appointment of Escrow Agent.* The Parties hereby appoint the Bank as the escrow agent under this Escrow Agreement (the Bank, in such capacity, shall be referred to herein as the "Escrow Agent"), and the Bank hereby accepts such appointment.

3. *Deposit.* After execution of this Escrow Agreement, and at a time, manner and upon such conditions as agreed to in the Confidential Master Settlement Agreement, Covidien will deliver to the Escrow Agent the cash sums as set forth in the Confidential Master Settlement Agreement as authorized by the Parties to be held by the Escrow Agent in accordance with the terms and conditions of this Escrow Agreement. Subject to and in accordance with the terms and conditions hereof, and any further orders of the Court, Escrow Agent agrees that it will receive, hold in escrow in a noninterest bearing account and release or distribute all or a part of the Fund.

4. *Investment of the Fund.* The Escrow Agent shall invest and reinvest the Fund in a noninterest bearing account held at Compass Bank.

5. *Disbursement of the Fund.* Escrow Agent shall make disbursements out of the Fund (a) in accordance with written instructions signed by the Firm and after written approval by Covidien, and in accordance with Fund Agreements in the form of those attached hereto as Exhibit "A", and incorporated herein by reference executed by individual Plaintiffs.

Notwithstanding anything contained herein or elsewhere to the contrary, the Parties acknowledge that the Escrow Agent shall be entitled to charge the Fund for, and pay and setoff from the Fund, any and all amounts, if any, then owing to either pursuant to this Escrow Agreement prior to the disbursement of the Fund.

6. *Record Keeping.* Escrow Agent shall maintain accurate books and records of the Fund, all other receipts relating to the Fund, and all transfers and disbursements from the Fund. Receipt and/or investment of the Fund and all other transfers and disbursements shall be confirmed to the Fund by Escrow Agent as soon as practicable by monthly account statement or other reasonable method, and any discrepancies therewith shall be noted to Escrow Agent within sixty (60) days following the Firm's receipt of the account statement. Failure to inform Escrow Agent in writing of any discrepancies shall presumptively be deemed confirmation of the account statement in its entirety.

7. *Tax Matters.* The Parties shall provide Escrow Agent with their respective taxpayer identification numbers, and the Escrow Agent shall obtain a taxpayer identification number for the Qualified Settlement Fund, documented by an appropriate Form W8 or W9 upon execution of this Escrow Agreement. Any payments of income shall be subject to applicable withholding regulations then in force in the United States or any other jurisdiction, as applicable. If applicable, the Escrow Agent and Covidien shall fully cooperate in filing a relation-back election under Treasury Regulations Section 1.468B-1(j)(2), to treat the Fund as coming into existence as a settlement fund as of the earliest possible date. The Escrow Agent shall cause to be filed, on behalf of the Fund, all required federal, state and local tax returns in accordance with Treasury Regulations Section 1.468B-2(k)(1); provided, that the Firm shall be responsible for all costs and expenses, including accountants' and tax consultants' fees, related to the preparation and filing of such returns and all inquiries and audits related thereto. Covidien shall supply to the Escrow Agent the statement described in Treasury Regulations Section 1.468B-3(e)(2), no later than February 15th of the year following each calendar year in which Covidien (or some other person on behalf of Covidien) makes a transfer to the Fund. Covidien shall not make an election to treat the Fund as a trust all of which is owned by the transferor under Section 671 of the Internal Revenue Code.

8. *Scope of Undertaking.* Escrow Agent's duties and responsibilities in connection with this Escrow Agreement shall be limited to those expressly set forth in this Escrow Agreement. Escrow Agent is not a principal, participant, or beneficiary in any transaction underlying this Escrow Agreement and shall have no duty to inquire beyond the terms and provisions of the Escrow Agreement except as specifically provided herein. Escrow Agent shall have no responsibility or obligation of any kind in connection with this Escrow Agreement or the Fund,

and shall not be required to deliver the Fund or any part thereof, or take any action with respect to any matters that might arise in connection therewith, other than to receive, hold, and deliver the Fund as herein provided. The Escrow Agent neither shall be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or document other than this Escrow Agreement, including, but not limited to, the Confidential Master Settlement Agreement and Fund Agreements, regardless of whether an original or copy of such has been provided to Escrow Agent; and the Escrow Agent shall have no duty to inquire as to the performance or nonperformance or applicability of any provision of the Confidential Master Settlement Agreement or any other such agreement, instrument, or document. References in this Escrow Agreement to the Confidential Master Settlement Agreement and any other agreement, instrument, or document are for the convenience of the parties, and the Escrow Agent shall have no duty or obligation with respect thereto. This Escrow Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations or duties shall be inferred or implied from the terms of this Escrow Agreement or any other agreement. Without limiting the generality of the foregoing, it is hereby expressly agreed and stipulated by the parties hereto that Escrow Agent shall not be required to exercise any discretion hereunder and shall have no investment or management responsibility and, accordingly, shall have no duty to, or liability for its failure to, provide investment recommendations or investment advice to the Firm, Covidien, the Escrow Agent, or any of them. Escrow Agent shall not be liable for any error in judgment, any act or omission, any mistake of law or fact, or for anything it may do or refrain from doing in connection herewith, subject, however, to Section 10 herein below, its own misconduct or gross negligence. Except for such liability, it is the intention of the parties hereto that Escrow Agent shall not be required to use, advance, or risk its own funds or otherwise incur financial liability in the performance of any of its duties or the exercise of any of its rights and powers hereunder.

9. *Reliance; Liability.* Escrow Agent may rely on, and shall not be liable for acting or refraining from acting in accordance with any written notice, instruction, or request or other document furnished to it hereunder or pursuant hereto, regardless of form, and believed by it to have been signed or presented by the proper party or parties. Escrow Agent shall only be responsible for holding and disbursing the Fund as directed or requested by the Firm and as approved by Covidien as provided in this Escrow Agreement; provided, however, that Escrow Agent shall have no liability for any loss arising from any cause beyond its control, including, but not limited to, the following: (a) acts of God, force majeure, including, without limitation, war (whether or not declared or existing), revolution, insurrection, riot, civil commotion, accident, fire, explosion, stoppage of labor, strikes or other differences with employees; (b) any delay, error, omission, or default of any mail, courier, or telecopier operator; or (c) the acts or edicts of any government or governmental agency or other group or entity exercising governmental powers. Escrow Agent is not responsible or liable in any manner whatsoever for the sufficiency, correctness, genuineness or validity of the subject matter of this Escrow Agreement and any part hereof, for the transaction or transactions requiring or underlying the execution of this Escrow Agreement or the form or execution hereof, or for the identity or authority of any person executing this Escrow Agreement. Notwithstanding anything in this Escrow Agreement to the contrary, in no event shall Escrow Agent be liable for any special, incidental, punitive, exemplary, indirect or consequential loss or damage of any kind (including,

but not limited to, lost profits) even if Escrow Agent had been advised of the likelihood of such loss or damage and regardless of the form of action.

10. *Right of Interpleader.* Should (a) any controversy arise involving the parties hereto or any other person, firm, or entity with respect to this Escrow Agreement or the Fund, (b) a substitute escrow agent fail to be designated as provided in Section 17 hereof, or (c) if Escrow Agent should be in doubt as to what action to take, Escrow Agent shall have the right, but not the obligation, either to (i) withhold delivery of the Fund until the controversy is resolved, the conflicting demands are withdrawn, or its doubt is resolved, or (ii) institute a petition for interpleader in any court of competent jurisdiction to determine the rights of the parties hereto. In the event Escrow Agent is a party to any dispute with respect to the parties hereto, this Escrow Agreement, or the Fund, Escrow Agent shall have the additional right to refer such controversy to binding arbitration as described in Section 11.

11. *Arbitration.* The parties hereto agree that all controversies that may arise between the Parties and the Escrow Agent concerning the construction, performance, or breach of this Escrow Agreement shall be determined by arbitration.

- (a) The arbitration will be held before a panel of three arbitrators chosen by the Parties and the Escrow Agent from a panel of persons knowledgeable in the banking industry.
- (b) Any arbitration shall be held in Houston, Texas. The arbitration shall be conducted in accordance with the commercial arbitration rules of the American Arbitration Association. The arbitration shall be held and a final decision reached within 30 days after the appointment of the arbitrators. The arbitrators shall file a certificate of ruling with the parties immediately after a decision is reached. The decision of the arbitration panel shall be final and conclusive on the parties, and there shall be no appeal therefrom. A decision of the arbitrators may be enforced by the prevailing party in a court of competent jurisdiction. All other issues in connection with such arbitration shall be determined in accordance with the rules of the American Arbitration Association.
- (c) The parties hereby agree that an action to compel arbitration pursuant to this Agreement may be brought in any court of competent jurisdiction. Application may also be made to such court for confirmation of any decision or award of the arbitration panel, which may be necessary to effectuate such decisions or awards. The parties hereto hereby consent to the jurisdiction of the arbitration panel and of such court and waive any objection to the jurisdiction and venue of such arbitration panel or court.
- (d) The prevailing party in any arbitration shall be entitled to reimbursement of reasonable attorneys' fees and disbursements and costs of arbitration from the non-prevailing party as determined by the arbitrators.

12. *Indemnification.* Escrow Agent shall have no obligation to take any legal action in connection with this Escrow Agreement or towards its enforcement, or to appear in, prosecute or defend any action or legal proceeding that would or might involve it in any cost, expense, loss or liability unless security and indemnity, as provided in this Section 12, shall be furnished.

To the extent permitted by applicable law, Fleming, Nolen & Jez, LLP., agrees to indemnify Escrow Agent and its officers, directors, employees and agents (the "Indemnified Parties" and each an "Indemnified Party") and save and hold the Indemnified Parties harmless from and against any and all Claims (as hereinafter defined) and Losses (as hereinafter defined) which may be incurred by an Indemnified Party as a result of Claims asserted against such Indemnified Party as a result of or in connection with such Indemnified Party's capacity as such under or in connection with this Escrow Agreement by any person or entity. For the purposes hereof, the term "Claims" shall mean all claims, lawsuits, arbitrations, mediations, causes of action or other legal actions and proceedings of whatever nature brought against (whether by way of direct action, counterclaim, cross action or impleader) an Indemnified Party, even if groundless, false or fraudulent, so long as the claim, lawsuit, cause of action or other legal action or proceeding is alleged or determined, directly or indirectly, to arise out of, result from, relate to or be based upon, in whole or in part: (a) the acts or omissions of one or more of the Parties, (b) the appointment of Escrow Agent as escrow agent under this Escrow Agreement, or (c) the exercise by Escrow Agent of its powers and discharge of its duties under this Escrow Agreement, including any alleged failure to exercise or discharge same; and the term "Losses" shall mean losses, costs, damages, expenses, judgments and liabilities of whatever nature (including, but not limited to, attorneys', accountants' and other professionals' fees, litigation, arbitration, mediation and court costs and expenses and amounts paid in settlement), directly or indirectly resulting from, arising out of or relating to one or more Claims. Upon the written request of an Indemnified Party, and to the extent permitted by law, the Firm agrees to assume the investigation and defense of any Claim, including the employment of counsel acceptable to such Indemnified Party and the payment of all expenses related thereto and, notwithstanding any such assumption, such Indemnified Party shall have the right, and the Firm agrees to pay the cost and expense, to employ separate counsel with respect to any such Claim and participate in the investigation and defense thereof in the event that such Indemnified Party shall have been advised by counsel that there may be one or more legal defenses available to such Indemnified Party that are different from or in addition to those available to any one or more of the Parties. The Escrow Agent and the Firm hereby agree that the indemnification and protections afforded the Indemnified Parties in this Section 12 shall survive the termination of this Escrow Agreement.

13. *Compensation and Reimbursement of Expenses.* Escrow Agent shall charge for its services hereunder in accordance with Escrow Agent's fee schedule attached as Exhibit "B" and Escrow Agent shall be reimbursed for all expenses incurred by Escrow Agent in connection with the performance of its duties and enforcement of its rights hereunder and otherwise in connection with the preparation, operation, administration and enforcement of this Escrow Agreement, including, without limitation, attorneys' fees, brokerage costs, and related expenses incurred by Escrow Agent. Fleming, Nolen & Jez, LLP., shall be liable to Escrow Agent for the payment of all such fees and expenses; provided, however, the Escrow Agent may, in its discretion, charge all of such fees and expenses to the Fund.

14. *Notices.* Any notice or other communication required or permitted to be given under this Escrow Agreement by any party hereto to any other party hereto shall be considered as properly given if in writing and (a) delivered against receipt therefore, (b) mailed by registered or certified mail, return receipt requested and postage prepaid or (c) sent by telefax machine, in each case to the address or telefax number, as the case may be, (d) sent by overnight courier, expenses prepaid, or (e) electronically mailed, set forth below:

If to Escrow Agent:

Compass Bank
Attn: Katherine Rider
2200 Post Oak Blvd. , 18th. Floor
Houston, TX 77056
Phone: (713) 831-5601
Fax: (713) 831-5750
katherine.rider@bbva.com

If to Firm:

Fleming, Nolen & Jez, LLP.
Attn: Rand P. Nolen
2800 Post Oak Blvd., Suite 4000
Houston, Texas 77056
Phone: (713) 621-7944
Fax: (713) 621-9638
rand_nolen@flaming-law.com

If to Covidien:

Joseph Petrosinelli, Esq.,
Williams & Connolly LLP
725 Twelfth Street, N.W.
Washington, DC 20005
jpetrosinelli@wc.com

Delivery of any communication given in accordance herewith shall be effective only upon actual receipt thereof by the party or parties to whom such communication is directed. Any party to this Escrow Agreement may change the address to which communications hereunder are to be directed by giving written notice to the other parties hereto in the manner provided in this section.

15. *Consultation with Legal Counsel.* Escrow Agent may consult with its counsel or other counsel satisfactory to it concerning any question relating to its duties or responsibilities hereunder or otherwise in connection herewith and shall not be liable for any action taken, suffered or omitted by it in good faith upon the advice of such counsel.

16. *Choice of Law.* The validity and construction of this Escrow Agreement, and of the rights and duties of the parties, shall be governed in accordance with the laws of the State of Texas, except that all matters of federal tax law and this Escrow Agreement's compliance with Section 468B of the Internal Revenue Code and Treasury Regulations promulgated thereunder, shall be governed by federal income tax law.

17. *Resignation/Removal.* Escrow Agent may resign hereunder upon ten (10) days' prior notice (the "Initial Notice") to the Parties. The Parties may remove Escrow Agent, upon thirty (30) days written notice to the Escrow Agent and upon Court approval. Upon the effective date of such resignation/removal at the sole discretion of the Court, Escrow Agent shall deliver the Fund to any substitute escrow agent designated by the Court in writing, at which time Escrow Agent's obligations hereunder shall cease and terminate, except for Escrow Agent's obligations to report receipts, transfers and disbursements to the Firm.

18. *Assignment.* This Escrow Agreement shall not be assigned by either of the Parties without the prior written consent of Escrow Agent and upon Court approval. Any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Escrow Agent is a party, shall be and become the successor escrow agent under this Escrow Agreement and shall have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

19. *Severability.* If one or more of the provisions of this Escrow Agreement 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 provisions hereof, and this Escrow Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, and the remaining provisions hereof shall be given full force and effect.

20. *Termination.* This Escrow Agreement shall terminate upon the disbursement, in accordance with Section 5 hereof, of the Fund in full; *provided, however,* that in the event all fees, expenses, costs, and other amounts required to be paid to Escrow Agent hereunder are not fully and finally paid prior to termination, the provisions of Section 13 hereof, "*Compensation and Reimbursement of Expenses,*" shall survive the termination hereof, and *provided further,* that the last two sentences of Section 10 hereof, "*Right of Interpleader,*" and the provisions of Section 12 hereof, "*Indemnification,*" shall, in any event, survive the termination hereof.

21. *General.* The section headings contained in this Escrow Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Escrow Agreement. This Escrow Agreement and any affidavit, certificate, instrument, agreement or other document required to be provided hereunder may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument. Unless the context shall otherwise require, the singular shall include the plural and vice-versa, and each pronoun in any gender shall include all other genders.

The terms and provisions of this Escrow Agreement constitute the entire agreement among the parties hereto in respect of the subject matter hereof, and neither the Parties nor Escrow Agent has relied on any representations or agreements of the other, except as specifically set forth in this Escrow Agreement. This Escrow Agreement is subject to the continuing jurisdiction of any court having jurisdiction over a Case in which the Fund has been made. This Escrow Agreement or any provision hereof may be amended, modified, waived, or terminated only by Order of a court which has approved the same in connection with a Case, which amendment, modification or termination shall be effective as to its parties to such Case; provided, however, any party to this Escrow Agreement may waive its rights without court approval. This Escrow Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, devisees, executors, administrators, personal representatives, successors, trustees, receivers, and assignees permitted under Section 18 hereof. This Escrow Agreement is for the sole and exclusive benefit of the Parties and the Escrow Agent, and nothing in this Escrow Agreement, express or implied, is intended to confer or shall be construed as conferring upon any other person any rights, remedies, or any other type or types of benefits. Neither the existence of this Escrow Agreement nor the disbursement of the Fund or any portion thereof shall be construed or interpreted as a release or waiver of any rights, remedies or claims any of the parties hereto may have under any other agreement, at law, in equity, or otherwise. The Parties have been, or have had an opportunity to be, represented by counsel and advisors (collectively referred to as "Counsel") of its own selection in this matter. Further, Covidien represents it has not relied upon Counsel for the Plaintiffs.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Escrow Agreement to be effective as of the date first above written.

Firm: FLEMING, NOLEN & JEZ, LLP.
By: _____
Name: _____
Title: _____

Settling Defendant: COVIDIEN
By: _____
Name: _____
Title: _____

Escrow Agent: COMPASS BANK
By: _____
Name: Katherine Rider
Title: Vice President

EXHIBIT A

PLAINTIFF NAME FINAL SETTLEMENT STATEMENT

This agreement is entered into this day between [redacted] and FLEMING, NOLEN & JEZ, L.L.P.

This settlement statement is made to memorialize our agreement concerning the proceeds of the settlement between [redacted] and COVIDIEN. The following settlement proceeds are divided pursuant to the contract of employment entered between [redacted] and Fleming, Nolen & Jez, L.L.P.

Subject to the above provisions, the settlement proceeds are divided as follows:

Gross Allocation Amount:

¹MDL Assessment @ 5% of Settlement

Net Allocation (after MDL Assessment)

Less 0% Attorneys' Fees:

Fleming, Nolen & Jez, L.L.P.

Total

Balance After Attorney's Fees:

²Case Expenses:

Allocation Amount less Attorney Fees and Case Expenses:

³Medical Lien:

NET TO CLIENT:

CLIENT RECITALS

I HAVE READ AND I AGREE TO THIS SETTLEMENT STATEMENT, AND I AUTHORIZE FLEMING, NOLEN & JEZ, L.L.P., AS MY ATTORNEYS, TO DISBURSE THE ATTORNEYS FEES AND TO WITHHOLD EXPENSES AS SHOWN ABOVE. I FURTHER CERTIFY THAT I AM UNAWARE OF ANY LIENS, JUDGEMNTS OR SUBROGATION INTERESTS IN THE SETTLEMENT PROCEEDS.

Date: _____

Signature: _____

Approved: _____

**Rand P. Nolen
Fleming, Nolen & Jez, L.L.P.**

¹ The Court issued an order to assess 5% of the Allocation amount for MDL expenses.

² Your proportional expenses related to your case and this settlement include, but are not limited to the following: filing fees, service fees and court fees; postage and courier costs; medical records feeds; deposition expenses; travel expenses; investigative and/or expert witness fees; common benefit expenses; interest and any other cash outlay specifically or commonly related to the case and/or type of case.

³ Pursuant to the law and/or the terms of the settlement, we are obligated to verify whether or not a lien exists and to satisfy the lien from your settlement proceeds before settlement money can be released to you. If an amount other than zero appears as a Medical lien, then that is the amount of the lien that will be paid out of your settlement funds from the Qualified Settlement Fund.

Matter No:

ADOPTION OF ESCROW AGREEMENT

THIS ADOPTION OF ESCROW AGREEMENT (this "Agreement") is entered into between and among, [REDACTED] ("Plaintiff"), and COMPASS BANK, a Texas banking association ("Escrow Agent").

RECITALS:

- A. Fleming, Nolen & Jez, LLP represents various plaintiffs (the "Plaintiffs") including [REDACTED] ("Plaintiff") in litigation (the "Litigation") against Covidien in various courts, including in the multi-district litigation *In re: C.R. Bard, Inc. Pelvic Repair Systems Products Liability Litigation*, MDL No. 2187 (the "Court").
- B. The Plaintiffs and Covidien, pursuant to a CONFIDENTIAL MASTER SETTLEMENT AGREEMENT ("Confidential Master Settlement Agreement") by and between Plaintiffs and Covidien, have agreed to settle certain cases in the Litigation using a "qualified settlement fund" as defined in Treasury Regulations Section 1.468B-1, and have agreed that Covidien will deposit all settlement proceeds relating to the Litigation in an escrow account, maintained pursuant to an Escrow Agreement, styled "Fleming, Nolen & Jez, LLP., Covidien Qualified Settlement Fund" (the "Fund") naming COMPASS BANK as escrow agent for the Fund. Plaintiff and the defendants have entered into a settlement (the "Settlement"), in order to provide for certain payments in full settlement and discharge of all claims which are the subject of the Complaint and Fund.
- C. Plaintiff seeks to have her settlement proceeds administered as part of the Fund, pursuant to the terms of the Escrow Agreement, and Plaintiff hereby adopts the Escrow Agreement, and agrees to be bound by the terms thereof.
- D. Payments. The Settlement calls for certain funds to be paid to the Plaintiff, which funds have been deposited with the Escrow Agent. After approval by Counsel for Covidien, Escrow Agent is hereby directed to make the payments identified on the Attached **PLAINTIFF NAME FINAL SETTLEMENT STATEMENT** to or for the benefit of Plaintiff.
- E. Entire Agreement. This Agreement contains the entire agreement between the Plaintiff and the Escrow Agent with regard to the matter set forth within it and shall be binding upon and inure to the benefit of all parties hereto, jointly and severally, and the executors, administrators, personal representatives, heirs, successors and assigns or each.
- F. Governing Law. THIS AGREEMENT IS ENTERED INTO IN THE STATE OF TEXAS AND SHALL BE CONSTRUED AND INTERPRETED IN ACCORDANCE WITH ITS LAWS.
- G. Cooperation of the Parties. All parties agree to cooperate fully and to execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement and which are not inconsistent with its terms.

EXECUTED to be effective as of the last date set forth below.

PLAINTIFF:

Date: _____

ESCROW AGENT: COMPASS BANK

Date: _____

By: _____

Title: _____

Matter No: _____

EXHIBIT B

**BBVA Compass
Escrow Services
Schedule of Service Charges**

Pre-Acceptance Review Fee

\$ 400 (WAIVED)

A non-refundable pre-acceptance review fee may be required when extraordinary time is required to evaluate the escrow document prior to acceptance.

Administrative Charge

Escrow Document

\$ 5,000

Fee charged per year or any part thereof.
Payable at inception of account and the beginning of each subsequent year

Extraordinary Services

In addition to the above referenced charges, a reasonable fee may be assessed for additional services based on the nature of the work, time involved, and responsibility assumed. Expenses for outside professional legal or accounting services, courier expenses, or other out of pocket expenses will be charged as incurred.

Expenses for tax filings incurred by Compass Bank will be passed through to the Firm.