

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

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

MDL No. 2187

**PRETRIAL ORDER # 241
(ORDER RE: QUALIFIED SETTLEMENT FUND – BARD – BLIZZARD & NABERS)**

Pending is an Unopposed Motion for Approval of Qualified Settlement Fund, filed February 22, 2017. [ECF No. 3079]. Blizzard & Nabers, LLP (“Blizzard”), as counsel for certain Plaintiffs in this MDL 2187, has moved the court for entry of an Order to aid in the efficient processing and administration of a confidential Master Settlement Agreement (the “MSA”) between Blizzard and Defendant C. R. Bard, Inc. (“Bard”) (collectively, the “Parties”) to resolve the claims of certain claimants against Bard, relating to the implant of Bard pelvic mesh products.

In particular, the Motion seeks an Order: (1) approving a Trust Agreement (the “Blizzard Bard Settlement Trust Agreement”), Exhibit A, which creates the Blizzard Bard Settlement Fund (the “Settlement Trust”), (2) where the court retains continuing jurisdiction and supervision over the Settlement Trust, (3) determining that the Settlement Trust 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.*, and (4) appointing a Trustee of the Settlement Trust.

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

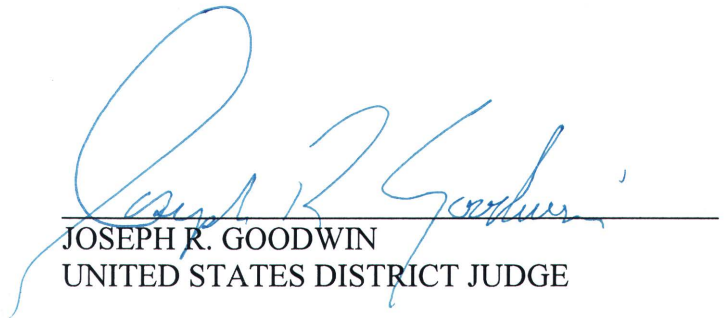
- 1) The Unopposed Motion is **GRANTED**.
- 2) The terms of the Trust Agreement are approved.

- 3) The Settlement Trust constitutes a qualified settlement fund within the meaning of Section 468B of the Internal Revenue Code of 1986, as amended, and its accompanying Treasury Regulations under Section 1.468B-1 *et seq.*
- 4) The court will retain continuing jurisdiction and supervision over the Settlement Trust, following the terms of the Settlement Trust Agreement.
- 5) Edward F. Blizzard shall serve as Trustee, pursuant to agreement of the Parties. The Trustee shall administer the Settlement Trust pursuant to the terms and conditions of the Trust Agreement.
- 6) Cadence Bank will serve as the Custodian that will hold the funds subject to the Trust Agreement, pursuant to agreement of the Parties.
- 7) Further, the funds held by the Custodian, and managed by the Trustee shall only be disbursed by the Trustee pursuant to and in conformity with the terms and conditions of the Trust Agreement and MSA, which include provisions for payments into the MDL 2187 Fund,, and a Blocked Account Agreement among Blizzard, Bard, and the Trustee.
- 8) The Trustee is granted the authority to take any actions consistent with the Trust Agreement and the MSA.
- 9) The Trustee shall have the authority to conduct any and all activities necessary to administer the Settlement Trust.

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 previously transferred to, removed to, or filed in this district, where applicable, which includes counsel in all such member cases up to and including civil action number 2:17-cv-001379. 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: February 27, 2017



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

EXHIBIT A

BLIZZARD BARD SETTLEMENT TRUST AGREEMENT

THIS TRUST AGREEMENT (hereinafter referred to as “Agreement”) is entered into for the purpose of administering settlement proceeds through a settlement trust account (“Settlement Trust”) established as a qualified settlement fund to resolve tort claims as part of a settlement process for certain individuals’ confidential settlements relating to their Bard pelvic implants and all other Claims as defined in a confidential Master Settlement Agreement (the “MSA”) between and among C. R. Bard, Inc., (“Bard”) and Blizzard and Nabers, LLP (“Blizzard”), acting on behalf of certain claimants represented by Blizzard (“Claimants”). The MSA, in part, provides for the creation of a qualified settlement fund to resolve or satisfy all claims and complete all payment obligations identified in the MSA. This settlement trust agreement and the Settlement Trust account was approved in filed Order, as a qualified settlement fund, by the U.S. District Court, S. District West Virginia, Charleston Division, in In Re: C.R. Bard, Inc. Pelvic Repair System Products Liability Litigation, MDL No. 2187 (the “Court”).

This Agreement, established to create the Settlement Trust, to hold the total settlement proceeds payable under the terms of the MSA, is made and entered into, on the date signed below, by:

1. Edward Blizzard, counsel for Claimants and designated in accordance with this Agreement, and by Court Order, as the Trustee for purposes of settlement, but as Administrator for purposes of qualified settlement fund administration (herein referred to as “Administrator”) and

WHEREAS, Bard has agreed to pay the sum set forth in the MSA (hereinafter referred to as “Settlement Proceeds”) into the Settlement Trust in order to, pending satisfaction of the other terms and conditions of the MSA, fully and completely extinguish any potential liability of Bard to all settling Claimants represented by Blizzard, identified on Exhibit A to the MSA;

WHEREAS, Section IV.B. of the MSA sets forth the terms and conditions: (i) governing the creation of the account, to be established as a “qualified settlement fund” (as defined in *Treas. Reg.* § 1.468B-1(a)); and (ii) governing the deposit of the Settlement Proceeds into that qualified settlement fund by Bard, to be retained therein and distributed therefrom in accordance with the terms of the MSA and this Agreement;

WHEREAS, a qualified settlement fund for Blizzard has been established by the Court and is called the Blizzard Bard Settlement Fund (hereinafter referred to as the “QSF”);

WHEREAS, the Administrator has arranged to have the Administrator itself and the Bank (defined below) hold the Settlement Proceeds in the QSF, as set forth below;

WHEREAS, the Administrator has agreed to serve as the administrator 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. Unless otherwise specified herein, the defined terms used in the MSA shall also apply in this Agreement.
- 2. Appointment of and Acceptance by the Administrator.** Consistent with the terms of the Court Order, Blizzard hereby appoints the Administrator to serve, and the Administrator agrees to serve, (a) as the “administrator” (as defined in *Treas. Reg.* § 1.468B-2(k)(3)) for the QSF and (b) in a Trustee function hereunder with respect to the Deposit (defined below). The term “Administrator” hereunder shall refer to both functions.
- 3. Intent and Purpose of the QSF.** The QSF is being established pursuant to order of the Court to complete the settlement process established 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 deposits from Bard, following the terms of the MSA and the settlement trust agreement created therein; (ii) implementing fund settlement agreements (as appropriate) in accordance with their terms, and/or (iii) distributing amounts in accordance with the MSA for those Claimants who qualify for such distributions out of the settlement trust, pursuant to the joint written authorization of Blizzard and Bard.
- 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 Administrator of the bank any authority to carry on any business or activity for profit (except the holding and investment of the Deposit (defined below) by Cadence Bank (“Bank”), a financial institution doing business in Houston, Texas, in accordance with the terms of Paragraphs 5-6 below).
- 5. Deposit.** Upon execution of the Agreement by Blizzard and in accordance with the terms of the MSA, Bard shall transfer the Settlement Proceeds (hereinafter referred to as the “Deposit”) to the Bank to be held by the Bank in accordance with the terms 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 Administrator agrees that it shall cause the Bank to receive, hold in trust, invest and release or distribute the Deposit as set forth herein.

All the 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 held by the Bank for the benefit of and titled in the name of the QSF and invested in instruments/securities comprised of (a) United States Agency, Government Sponsored Enterprises or Treasury securities or obligation (or mutual fund invested solely in such instruments); (b) cash equivalent securities including SEC registered money market funds and collateralized money market accounts; and/or (c) deposit and similar interest-bearing, or non-interest bearing accounts subject to maximum Federal Depository Insurance Corporation protections. The Bank shall be responsible for any and all investment related decisions, following the instructions of the Administrator and/or its investment advisor pursuant to these terms and conditions, such that the following investment policy is implemented: (1) safety of principal; (2) zero bank balance exposure; and/or (3) the use of zero sweep disbursement accounts to ensure funds remain in custodial or fully insured accounts to avoid an impermissible risk of loss should the financial institution holding the funds fail. The Bank shall not be allowed to distribute any income or principal from the QSF except upon instruction of the Administrator (which instructions shall be given only in accordance with the terms of the MSA, which require the joint written authorization of Blizzard and Bard) or, if requested upon the order of the Court upon the joint motion of the parties. Any losses incurred as a result of the investing or other handling of the Deposit shall not be recoverable from Bard and Bard and its counsel shall have no responsibility for the performance of the Bank or the Administrator. Receipt and/or investment of the Deposit shall be confirmed to Blizzard and/or to its' Claimants by the Administrator 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 pursuant to the MSA, which requires the joint written authorization of Blizzard and Bard.
- 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 QSF, by and through the Administrator, shall only make payments to Blizzard or the Blizzard Claimants, or such other claimants to the QSF with valid claims and/or liens. The QSF shall be authorized to distribute

all attorneys' fees and litigation expenses to counsel for the Blizzard Claimants, consistent with existing contingency fee contracts or, to the extent required by law, and, where required by law in an individual case, upon Court approval on motion of Blizzard. In directing the Bank to make disbursements of the Deposit, the Administrator shall comply with the terms of the MSA and/or any future order of the Court. Such disbursement may take the form of lump sum distributions and/or periodic payments as specified in paragraph 11 of this Agreement.

- 10. Use of Interest or Investment Income.** Notwithstanding the foregoing, the Administrator is permitted to authorize a distribution of all excess income earned by the QSF, after the payment of fees, expenses and taxes, to the Claimants on a pro-rata basis. For example, if there are four claimants involved in a settlement, with each claimant possessing a 25% interest in the Deposit, and the QSF possesses \$100 in net income after payment of fees, expenses and taxes, the \$100 would be split evenly among the four claimants. As the example indicates, each claimant's share of the excess income is strictly correlated to their respective percentage interest in the Deposit.
- 11. Structured Settlements.** The QSF, by and through the Administrator, may purchase and assign any structured settlements created under any Release Agreements. The Administrator shall also be authorized to enter into non-qualified assignments for the convenience of the Blizzard Claimants to the extent that attorneys' fees are to be paid as part of their obligations under existing contingency fee agreements¹.
- 12. Reports and Accounting.** The Administrator shall provide to Bard a statement including receipts, investment earnings, interest and disbursements on a monthly basis.
- 13. Tax Matters.** Within five (5) business days of receipt of the signed Motion and Order to Establish the QSF, the Administrator 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 Administrator. The parties agree the terms and conditions of the MSA, together with this Paragraph 11, shall govern the tax treatment of the QSF. Upon receipt of the Deposit by the Bank, the Administrator shall promptly take all steps necessary for qualifying the QSF as a "qualified settlement fund" within the

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 assignee 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. Where attorney fees are to be deferred and paid out over time, Structured Settlement Payments are non-qualified, as they do not meet the requirements of Section 130(c) of the Internal Revenue Code. In those cases, the attorneys would receive the benefits of a non-qualified funding asset as part of deferred compensation, for the convenience of their clients (claimants to the QSF).

meaning of *Treas. Reg. § 1.468B-1* and in accordance with Section 2 of the MSA. These obligations include, without limitation, the following:

- a) Regulation § 1.468B-3 Statement. The Administrator will prepare a “Regulation § 1.468B-3 Statement” pursuant to *Treas. Reg. § 1.468B-3(e)* on behalf of Bard and provide copies to Bard’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) Income Tax Returns. The Administrator 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.
- c) Notwithstanding any other provision of this Agreement, the parties hereto acknowledge and agree that Bard has made no representation or warranties regarding the tax consequences under the MSA and this Agreement and shall have no liability to the Claimants, the Administrator, the Bank or any other party with respect to matters related to such tax consequences. Further, the 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.

14. Limitation of Bard’s Liability. Bard and its counsel and insurers, if any, shall have no obligation and incur no liability whatsoever with respect to the distribution and administration of the QSF. Following the contribution to the settlement escrow account, Bard and its counsel and insurers, if any, shall have no further obligation to contribute to the QSF and no further obligation to Claimants.

15. Payment to Associated Counsel. The Administrator shall be authorized to direct the Bank to distribute all attorney fees and litigation expenses to Blizzard, following Paragraph 11 above, and consistent with existing contingency fee contracts, the Court’s Order, and to the extent required by law with any periodic payments made as part of attorney fee payment done for the convenience of the Blizzard Claimants.

16. Compensation and Reimbursement of Expenses. The Administrator shall receive compensation following the terms of the Scope of Services agreement executed by Blizzard, provided, however, that the fees of, and expenses reasonably incurred by, the Administrator in performing its obligations or enforcing its rights hereunder, including reasonable attorney’s fees, shall be paid by the Bank solely from the income earned on the Deposit (payable as requested in writing by the Administrator). Where such income is insufficient, the Administrator’s fees and expenses described above and as provided in the Scope of Services agreement, may be charged against the Deposit (principal).

17. Reliance. The Administrator shall have the right to rely upon any affidavit, certificate, letter, notice, electronic mail or other document believed by such party to be genuine

and sufficient, and upon any other evidence believed by such party, in its reasonable judgment, to be genuine and sufficient, which may be provided to either of such parties by Associated Counsel.

- 18. Termination.** Upon final distribution of all of the Deposit, the Administrator 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.
- 19. Resignation or Removal of the Bank or Administrator.** The Administrator may resign hereunder upon providing thirty (30) days' prior written notice to Blizzard. The Administrator may be removed, with or without cause, by Blizzard, at any time by the giving of thirty (30) days' prior notice to such party. Upon the effective date of such resignation or removal, the future obligations of the Administrator hereunder shall cease and terminate. The Administrator retains the right to remove the Bank with or without cause, and may designate a replacement bank. In the case of a removal of the Bank, the Administrator shall direct the Bank to deliver the Deposit to the successor bank designated by the Administrator. 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.
- 20. 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 telex, telecopy, facsimile or prepaid telegram, in each case addressed as follows:

If to the Administrator or Blizzard and/or Claimants:

Edward Blizzard
Blizzard & Nabers, LLP
440 Louisiana, Suite 1710
Houston, TX 77002
Fax: (713) 844-3755
[Email: ebizzard@blizzardlaw.com](mailto:ebizzard@blizzardlaw.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.

- 21. Third Party Beneficiaries.** Bard is an intended third party beneficiary to this Agreement. This Agreement is for the exclusive benefit of the parties hereto and Bard 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.
- 22. Confidentiality.** All information disclosed by any party (or its representatives) in connection with the implementation of this Agreement, including but not limited to Blizzard, Bard, and the Bank, whether before or after the date hereof, to any other party (or its representatives) will be kept confidential by such other party and its representatives and will not be used other than as contemplated by this Agreement, except to the extent that such information: (a) was known by the recipient when received; (b) is or hereafter become lawfully obtainable from other sources; (c) is necessary or appropriate to disclose to a governmental entity having jurisdiction over any party, or as may otherwise be required by applicable law or by the Court; or (d) to the extent such duty as to confidentiality is waived in writing by the relevant party.
- 23. Choice of Laws.** This Agreement shall be construed under, and this Agreement and the Deposit shall be governed by, the laws of Texas.
- 24. 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 herein, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 25. Headings.** The headings used herein are for reference only and shall not affect the construction of this Agreement.
- 26. 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.
- 27. 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 herein.
- 28. 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:

Edward Blizzard, as Administrator and
Authorized Agent of Blizzard & Nabers, LLP

Printed Name: _____

Date: _____