

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 # 256
(Order On Plaintiffs' Unopposed Motion To Create The Fleming, Nolen & Jez,
LLP., Bard Qualified Settlement Fund)**

Plaintiffs, Carla G. Potter and Christene Nielsen, by and through their counsel Fleming, Nolen & Jez, LLP ("Plaintiffs' Counsel"), also counsel for 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 "MSA") between Defendant C. R. Bard, Inc. ("Bard") and Plaintiffs' Counsel to resolve the claims of certain claimants against Bard relating to Bard pelvic mesh products. [ECF No. 3823]. In particular, this Motion seeks an Order (1) approving the Escrow Agreement attached as Exhibit A, which forms a settlement escrow named the Fleming, Nolen & Jez, LLP., Bard Qualified Settlement Fund (the "Settlement Escrow"); (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 Unopposed 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

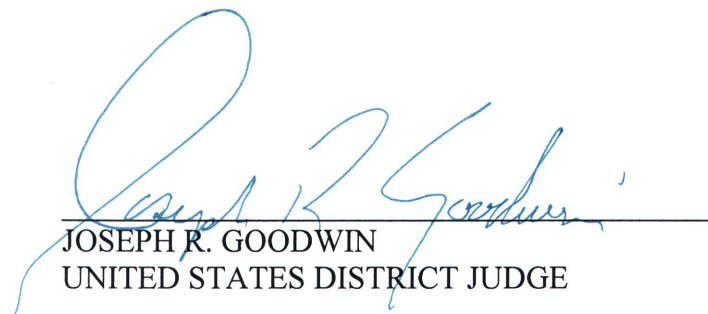
Revenue Code of 1986, as amended (the “Code”) and Treasury Regulations sections 1.468B-1. *et seq.*;

- 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 MSA;
- 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 MSA. Further, the funds held by the Escrow Agent in the Settlement Escrow shall be disbursed by the Escrow Agent only pursuant to the terms of the MSA and pursuant to a Joint Authorization executed on behalf of Plaintiffs’ Counsel and on behalf of Bard; 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 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 2:17-cv-03164. 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 6, 2017



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

EXHIBIT A

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

THIS QUALIFIED SETTLEMENT FUND ESCROW AGREEMENT (this "Escrow Agreement," as the same may be amended or modified from time to time and including any and all written instructions given to "Escrow Agent" pursuant hereto) is made and entered into as of _____, 2017, by and among:

Fleming, Nolen & Jez, LLP (the "Firm"), and C. R. Bard, Inc. ("Bard") (the Firm and Bard 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 Bard in various courts, including in the multi-district litigation *In re: C. R. Bard, Inc. Pelvic Repair System Products Liability Litigation*, MDL No. 2187 (the "Court").

B. The Plaintiffs and Bard, pursuant to a confidential Master Settlement Agreement ("MSA") by and between the Firm and Bard, 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 Bard 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, Bard 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 BARD 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 Bard can satisfy the Plaintiffs' personal injury claims asserted or that could have been asserted in the Litigation as well as to facilitate other payments, including of liens on the amounts paid in the settlement and to the MDL 2187 Common Benefit Fund, in accordance with the terms of the Master Settlement Agreement and Orders of the Court.

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 in writing by Bard to disburse the proceeds, in accordance with the terms of the MSA.

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

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 Bard arising out of personal injuries resulting from surgeries involving "Pelvic Repair Products." The Order permits Bard 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 Bard 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 Pelvic Support Systems and/or any other pelvic repair product, including but not limited to transvaginal surgical mesh repair products and components used to treat either Stress Urinary Incontinence or Pelvic Organ Prolapse, designed, manufactured, marketed, distributed, and/or sold by Bard, such as Avaulta Solo Anterior, Avaulta Solo Posterior, Avaulta Plus Anterior, Avaulta Plus Posterior, Align, Adjust, Alyte, Bard Mesh, Marlex Mesh, Bard Soft Mesh, DuraDerm, Bard Dermal Allograft, Faslatra Allograft, Composix Mesh, Dulex Mesh, Monofilament PP Mesh, Reconix, SeptraMesh, Ventrallex, Ventralight, and/or any other product used for the repair of soft tissue in the human body, as well as any variations of such products, past, present or future. Not included are products manufactured by Covidien PLC or one of its subsidiaries, including, but not limited to, Sofradim Production and Tissue Science Laboratories Limited.

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 MSA, Bard will deliver to the Escrow Agent the monetary amount provided in the MSA 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 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) Goldman Sachs Financial Square Government Fund #465 - Institutional Share Class; and/or (b)

non-interest-bearing accounts with domestic banks solely for the short-term purpose of clearing checks and wires upon disbursement, with the condition that funds are only held in this manner for distribution of client funds and all remaining funds not being deemed ready for disbursement held off the bank balance sheet.

5. *Disbursement of the Fund.* Escrow Agent shall make disbursements out of the Fund in accordance with written instructions signed by the Firm and by Bard, consistent with and pursuant to the MSA and in the form of the Joint Authorization attached hereto as Exhibit "A", and incorporated herein by reference. 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 pursuant to this Escrow Agreement prior to the disbursement of the Fund, provided that before there is a charge for "Extraordinary Services" as described on Exhibit B, Bard shall be given notice and an opportunity to object.

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. The Escrow Agent shall prepare and deliver monthly account statements to the Firm and Bard. 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 W9 upon execution of this Escrow Agreement. Any payments of income not otherwise due to Bard under the terms of the MSA shall be payable to the Fund subject to applicable withholding regulations then in force in the United States or any other jurisdiction, as applicable. If applicable, the Escrow Agent and Bard 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. Bard 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 Bard (or some other person on behalf of Bard) makes a transfer to the Fund. Bard 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. In addition, all interest or other income earned and distributed under this Escrow Agreement shall be reported, as and to the extent required by law, by the Escrow Agent to the IRS, or any other taxing authority, on IRS Form 1099 or 1042S (or other appropriate form) as income earned by the Party receiving the distribution.

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 MSA 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 MSA or any other such agreement, instrument, or document. References in this Escrow Agreement to the MSA 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, Bard, 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 willful 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 Bard 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 the Governing Court 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. *Dispute Resolution.* 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 the Governing Court, as specified in the MSA.

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, the Firm 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 "A" 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. The Firm 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

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

and

Compass Bank

Attn: Brian Herrick
2200 Post Oak Blvd., Houston, TX 77056
Phone: (713) 831-5673
Fax: (713) 831-5735
brian.herrick@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 Bard:

Nina M. Gussack
Kenneth H. Zucker
Pepper Hamilton LLP
3000 Two Logan Square
Philadelphia, PA 19103
Email: gussackn@pepperlaw.com
Email: zuckerk@pepperlaw.com
Phone: (215) 981-4000
Fax: (215) 981-4750

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. Confidentiality. All information disclosed by any of the Parties (or its representatives), whether before or after the date hereof, in connection with the transactions contemplated by or the discussion and negotiations preceding this Escrow Agreement, to any of the other Parties (or their representatives) will be kept confidential by such other Parties and their representatives and will not be used by any such persons other than as contemplated by this Escrow Agreement, except to the extent that such information: (a) was known by the recipient when received; (b) is or hereafter becomes lawfully obtainable from other sources; (c) is necessary or appropriate to disclose to a governmental entity having jurisdiction over the Parties, 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 other Party.

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, Bard 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: BARD

By: _____

Name: _____

Title: _____

Escrow Agent: COMPASS BANK

By: _____

Name: Katherine Rider

Title: Vice President

EXHIBIT A

 JOINT AUTHORIZATION TO DISBURSE FUNDS

Pursuant to the Escrow Agreement for the Fleming, Nolen & Jez, LLP, Bard Qualified Settlement Fund, dated _____, 2017, and executed by and among Compass Bank, (the “BANK”), Fleming, Nolen & Jez LLP (“FLEMING, NOLEN & JEZ”), and C. R. Bard, Inc. (“BARD”), this document authorizes the BANK to:

(1) Unblock account _____, the Fleming, Nolen & Jez, LLP, Bard Qualified Settlement Fund, for the limited purpose of disbursing, pursuant to the Master Settlement Agreement between FLEMING, NOLEN & JEZ and BARD, the funds described in paragraphs (2) and (3).

(2) Disburse to FLEMING, NOLEN & JEZ (which may include FLEMING, NOLEN & JEZ and/or the Claimants listed in the attached chart titled “Bard – Fleming, Nolen & Jez - _____ Joint Authorization to Unblock Account (Exhibit A)”) a total amount not to exceed _____ Dollars and _____ Cents (\$ _____), based on the settlement funds available to the Claimants listed on the attached chart.

(3) Disburse to the MDL 2187 Common Benefit Fund a total amount not to exceed _____ Dollars and _____ Cents (\$ _____) by way of wire transfer as follows:

Receiving Bank: United Bank
Address: 514 Market Street
Parkersburg, WV 21601
Bank Routing Number: 051900395
Beneficiary Acct Name: MDL 2187 Common Benefit Fund
Beneficiary Acct Number: 68605192

(4) Disburse to [Lien Resolution Administrator or Lienholder], a total amount not to exceed _____ Dollars and _____ Cents (\$ _____), which [Lien Resolution Administrator or Settlement Administrator] represents and warrants shall be used for the sole purpose of satisfying liens consistent with Exhibit A.

By executing this Joint Authorization, FLEMING, NOLEN & JEZ represents and warrants that (i) any and all liens, assignment rights, and other third party claims have been or will be satisfied for each Claimant whose settlement disbursement is included within this Joint Authorization and (ii) any and all court approvals for payment to each such Claimant that are required by law, including but not limited to payment for claims concerning a decedent and claims subject to a bankruptcy proceeding, have been supplied to Bard.

C. R. BARD, INC.

Dated: _____

BY: _____
KENNETH H. ZUCKER

FLEMING, NOLEN & JEZ

Dated: _____

BY: _____

RAND NOLEN

SETTLEMENT ADMINISTRATOR

Dated: _____

BY: _____