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May 17, 2024

**VIA FEDERAL EXPRESS**

The Honorable Glenn A. Grant, J.A.D.  
Acting Administrative Director of the Courts  
Administrative Office of the Courts  
of the State of New Jersey  
Richard J. Hughes Justice Complex  
25 West Market Street  
Trenton, New Jersey 08625



**Re: Request Pursuant to R. 4:38A for Multi-County Litigation Designation for Cases involving Bard Implanted Port Product**

Dear Judge Grant:

This office represents forty-one (41) Plaintiffs with cases currently pending in the Superior Court of New Jersey, involving Bard implanted ports designed, manufactured, promoted, marketed, distributed, and sold by the related entities C.R. Bard, Inc., Bard Access Systems, Inc., and Becton Dickinson and Company (collectively "Defendants"). As Your Honor will recall, , on September 28, 2023, the undersigned applied for Multi-County Litigation ("MCL") designation of these cases, involving implanted port products manufactured and distributed by the Defendants. At the time of Plaintiff's initial application for MCL designation, there were three (3) pending actions involving Defendants' implanted port products. On January 29, 2024, the said application was denied due solely to the limited number of cases at the time.

See January 29, 2024 Notice to the Bar, attached hereto as **Exhibit A**. Specifically, your Honor noted that the Supreme Court “based its denial on the limited number of cases at present.” *Id.*

Presently, there are forty-one (41) pending cases involving Defendants’ implanted port products. See Complete List of Filed Cases, attached hereto as **Exhibit B**. Plaintiffs anticipate that many additional cases will be filed soon involving the same or similar products, injuries, claims, and alleged culpable parties. Therefore, Plaintiffs presently renew their application for MCL designation of these cases. MCL designation will promote judicial efficiency, facilitate coordinated discovery, avoid inconsistent pretrial rulings, and benefit the interests of all parties. Accordingly, as further explained below, Plaintiffs respectfully request that the cases listed in Exhibit B be given MCL designation pursuant to R. 4:38A, and your Honor’s directive # 02-19.

### **BACKGROUND**

Plaintiffs in these cases have filed civil actions for injuries caused by Defendants’ implanted port products (collectively the “Actions”). Each of the claims allege that: (1) the Plaintiff was implanted with a port product manufactured by the Defendants consisting of an injection reservoir and a flexible, polymeric catheter; (2) the catheter component of the port products was manufactured to include a radiopaque agent called barium sulfate, which is known to reduce the material integrity of the catheter when it is not encapsulated, coated or otherwise separated from the catheter surface; (3) the loss of exposed barium sulfate particles from the catheter surface leaves microfractures, fissures, and other alterations to the polymeric structure that in turn increase the likelihood of one or more of the injuries common to these products: catheter fracture, catheter infection, and thromboembolism; (4) Defendants misrepresented the safety of the port products to the medical community and the FDA; (5) Defendants negligently and fraudulently designed, marketed, distributed, and sold these products, (6) Defendants knew

or should have known that these port products were not safe for the patients to whom they were prescribed and in whom they were implanted because once implanted, the products were prone to catheter fracture, bacterial colonization, potentiation of thromboembolism, and otherwise malfunctioning and causing serious injury; and (7) strict liability claims that these products were defective and unreasonably dangerous and lacked proper warnings. Additionally, all plaintiffs seek similar damages- pain, suffering, emotional distress, medical expenses and punitive damages. And expert testimony in these cases - from all parties - will have substantial overlap, and consolidation will streamline these efforts.

Shortly after the Defendants introduced these products into the market—and long before these Plaintiffs were implanted with them—Defendants received numerous adverse event reports (“AERs”) involving the types of device failures enumerated herein. These AERs were associated with severe injuries and complications, including hemorrhage, cardiac/pericardial tamponade, cardiac arrhythmia, infection, sepsis, thromboembolism, and even death. In many instances, the Defendants concealed known device failures and injuries from medical professionals and patients through submission to the FDA’s controversial Alternative Summary Reporting (“ASR”) program, which was in effect from 1997 through June of 2019. The ASR program permitted device manufacturers to request exemptions, variances, or alternatives to reporting requirements. In contrast with the FDA’s public Manufacturer and User Facility Device Experience (“MAUDE”) database, manufacturer reports of device failures submitted through the ASR program were not available to the public, including healthcare providers, until 2019. From 2004 to 2018 approximately 65% of all reported adverse events related to implanted port products (the vast majority of them associated with Defendants’ products) were reported through the non-public ASR program rather than MAUDE. The FDA halted its ASR program after its

existence was exposed by a multi-part investigative report, prompting a widespread outcry from medical professionals and patient advocacy groups. The expert testimony on this issue which would invoke the question of punitive damages as well – again both from plaintiffs and defense- will have substantial overlap, and consolidation will streamline this issue as well.

More recently, published and peer-reviewed scientific literature has revealed the ubiquity and breadth of injuries related to implanted port products. In 2020, a large study evaluating the long-term complication profile associated with port placement was published.<sup>1</sup> The pool of participants of the study included 93,756 patients who had an implanted port. The study's findings were striking: more than half of patients – 59.04% – experienced arrhythmogenic and thromboembolic complications or infection and mechanical failure of the device within 5 years after implantation. This complication rate is all the more staggering in light of the fact that: (1) implants of port products in the United States are estimated at over 300,000 annually, and (2) Defendants are the undisputed market leaders of implanted port products in the United States, accounting for more than fifty percent (50%) of domestic implanted port sales. These concerning findings follow numerous published studies over the last thirty years indicating that these common injuries are caused by the same unreasonably dangerous design elements alleged in the Actions. The Actions seek to hold Defendants liable for injuries caused by their wrongful conduct in connection with the design, development, manufacture, testing, packaging, promoting, marketing, distribution, labeling, and sale of their implanted port products.

**MCL DESIGNATION IS APPROPRIATE**

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<sup>1</sup>Syed I. Khalid, et al., *Outcomes following port-a-catheter placement in the Medicare population*, 3 *Surgery Open Science* 39 (2020).

As set forth in the guidelines promulgated in Directive #02-19, multi-county litigation is warranted when a litigation, among other considerations, involves a large number of parties; many claims with common, recurrent issues of law and fact; there is geographical dispersion of parties; there is a high degree of commonality of injury or damages among plaintiffs; there is a value interdependence between different claims; and there is a degree of remoteness between the court and actual decision makers in the litigation. The guidelines also include the following considerations: whether centralized management is fair and convenient to the parties and witnesses; whether there is a risk of duplicative or inconsistent rulings if the cases are not coordinated; and whether coordinated discovery would be advantageous. These Actions satisfy the foregoing factors.

**A. These Actions involve a large number of parties with a high degree of commonality of injury and common questions of law and fact.**

Currently, there are forty-one (41) cases involving Defendants' implanted port products. Ex. B. This is more than sufficient to justify MCL designation. *See* June 8, 2020 Notice to Bar, and February 5, 2020 MDL Application of Mazie Slater Katz & Freeman, attached hereto as **Exhibit C** (granting MCL designation to Allergan Biocell Textured Breast Implant Litigation where there were six (6) filed cases at the time of application); *see also* April 18, 2011 Notice to Bar, and December 1, 2010 MDL Application of Drinker Biddle & Reath, attached hereto as **Exhibit D** (granting centralized management to DePuy ASR Hip Implant Litigation where three (3) filed cases at the time of application). A large number of further cases are anticipated as the Defendants' products account for more than 50% of the approximate 300,000 annual sales of implanted port products in the United States, and there is a complication rate of nearly 60% associated with such products. Centralization is appropriate here because the Actions all have

substantial commonality of questions of fact and law. Here, the Actions allege that Defendants engaged in wrongful conduct in the design, manufacture, marketing, sale, and post-market surveillance of their implanted port products.

The Actions further allege that the design of the catheter components of Defendants' products are rendered unreasonably dangerous by a common design element, namely exposed barium sulfate on the catheter surface, and that said unreasonably dangerous condition caused Plaintiffs' injuries. Moreover, these Actions allege that the Defendants knew of these defects and failed to correct them by incorporating a safer feasible alternative design and failed to adequately warn healthcare providers of the nature and magnitude of the risks attendant to these defects. The common questions of fact concerning the development, testing, manufacturer, sale, marketing, and adequacy of warnings for Defendants' implanted port products—including industry knowledge of the products' danger—clearly warrant transfer and consolidation of these Actions.

Further, these Actions share common Defendants and corporate witnesses. There is geographical dispersion of the parties as the Defendants' implanted port products were sold throughout the United States. There is a high degree of commonality of injury with most parties suffering one or more of the three injuries described above: catheter fracture, catheter infection, and thromboembolism. These same or similar factors led the United States Judicial Panel on Multidistrict Litigation to decide on August 8, 2023, that all pending and future federal Bard implanted port cases should be centralized for case management purposes. *See* Transfer Order, MDL No. 3081, attached hereto as **Exhibit E**. The MDL Order is sensible and persuasive. The MDL panel found (correctly) that these cases all involve common questions of law and fact. *Id.* at p 1. As the MDL Panel noted:

All actions can be expected to share factual questions arising from allegations that defendants manufacture the catheter component of their port devices with a

concentration of barium sulfate that is too high, which reduces the material integrity of the catheter, and can lead to injuries, including infection, fracture of the catheter, migration of the catheter, and thrombosis. All actions share common issues of fact regarding whether the design of Bard's port catheters involves a concentration of barium sulfate that reduces the material integrity of the catheters and can cause injury, whether defendants adequately tested the devices, and whether defendants adequately monitored and reported adverse events relating to product failures. Centralization offers an opportunity to substantially streamline pretrial proceedings, reduce duplicative discovery and conflicting pretrial obligations, as well as prevent inconsistent rulings on common Daubert challenges.

Exhibit E, p.1.

While Bard opposed Plaintiffs' application to consolidate the federal cases into an MDL, the Panel decided to centralize the litigation in the United States District Court for the District of Arizona. In doing so, the Panel relied on well-established principles of centralization:

But as we have held, "almost all injury litigation involves questions of causation that are case- and plaintiff-specific. Such differences have not been an impediment to centralization in the past." *In re Wright Med. Tech., Inc., Conserve Hip Implant Prods. Liab. Litig.*, 844 F. Supp. 2d 1371, 1372 (J.P.M.L. 2012). Unlike in *In re Belviq (Lorcaserin HCI) Products Liability Litigation*, cited by defendants, the plaintiffs in the cases now before the Panel allege a common mechanism for their various injuries. *See* 555 F. Supp. 3d 1369 (J.P.M.L. 2021). "[I]ndividualized factual issues concerning causation," therefore, seem far less likely to "predominate and diminish the potential to achieve significant efficiencies in an MDL." *Id.* at 1370.

Exhibit E, p. 2.

In December 2023, the Bard Defendants moved to vacate the JPMDL's transfer order transferring several cases into the existing MDL. On February 5, 2024, the Judicial Panel on Multidistrict Litigation denied that motion. Exhibit F. In so doing, the panel again reiterated the benefits in terms of clarity, expediency, and conservation of judicial resources in consolidating these cases. Quoting its August 8, 2023 order, the Panel stated:

[C]entralization was warranted for actions sharing factual questions arising from allegations that defendants manufacture the catheter component of their port devices with a concentration of barium sulfate that is too high, which reduces the material integrity of the catheter, and can lead to injuries, including infection, fracture of the catheter, migration of the catheter, and thrombosis...

Plaintiffs in these three actions allege they were implanted with a Bard implanted port catheter and subsequently suffered an infection. Thus, they allege claims against the same defendants, regarding the same products, and alleging similar injuries as the MDL plaintiffs. The cases therefore will share factual questions regarding, for example, defendants' testing of their implanted port devices and the adequacy of the warnings given about the risk of infection. More specifically, these plaintiffs, like those in MDL No. 3081, allege that defendants' manufacturing process in constructing the catheter component of the devices involves too a high a concentration of barium sulfate particles, which ultimately increases the risk of infection... Transfer therefore is consistent with our order granting centralization, and these actions will involve overlapping discovery and pretrial proceedings.

Ex F, p.1.

In specifically denying Defendants' motion to vacate, the Panel ruled:

The addition of these alternative theories of causation does not diminish the benefits of transferring these cases. Whether plaintiffs' infections were caused by a defect in the catheter, in the port reservoir, or both may not be readily known at the time of filing, and may require fact and expert discovery to develop.... Defendants suggest that the parties wait for individualized discovery to indicate whether a particular action involves a catheter-related injury and, if so, seek transfer at that time. We do not agree. Requiring the parties and the courts to engage in protracted discovery and other pretrial proceedings outside the MDL while the parties attempt to determine the exact mechanism of causation would negate many of the benefits of Section 1407 transfer. Plaintiffs' injuries are indivisible, and we have previously found that alternative theories of causation of a plaintiff's injury are appropriate to include in an MDL, even where, unlike here, those alternative theories involved a separate product manufactured by a previously unnamed defendant.

*Id.*, p.2.

Defendants contended in opposition to Plaintiffs' initial MCL application and in their unsuccessful motion to vacate several transfer orders, that Plaintiffs claims involve disparate categories of injuries arising from multiple different models of the Defendants' line of implanted port products and thus, the individual or case-specific issues among the subject cases



predominate over common ones and obviate the need for centralization. The Panel specifically rejected this argument – twice- as should the New Jersey Supreme Court. The commonality of the complex questions of fact present in the instant matter are of a nature which warrant centralization. Even where there is some diversity among plaintiffs as to the nature of the injuries alleged, centralization is especially appropriate where there is a common injury mechanism. *In re Atrium Med. Corp. C-Qur Mesh Prod. Liab. Litig.*, 223 F. Supp. 3d 1355 (J.P.M.L. 2016) (transferring cases involving alleged failures of different models of manufacturer's hernia mesh products causing different injuries such as infection, chronic pain, hernia recurrence). There is unquestionably a common mechanism at issue here.

The Judicial Panel on Multidistrict Litigation in *Atrium* transferred cases involving different types of injuries after correctly observing the common cause of the diverse injuries, namely the different models' propensity to "incite an allergic or inflammatory response that causes severe complications." *Id.* Here, the pending cases involve a narrow set of injuries which *all arise from a common mechanism*, the catheter surface degradation caused by loss of barium sulfate particles. As a result, there will be remarkable overlap among the cases in the discovery materials sought, the types of experts retained and the evidence they provide, and numerous other issues.

Further, the fact that the cases at issue involve different models of the Defendants' line of implanted port products does not militate against centralization. Defendants argue that because the filed complaints involve five styles of implantable port catheter devices, these cases do not have sufficient common issues to warrant centralization. However, each of the five devices are incredibly similar and the same defect and mechanism of injury is alleged for each of the devices. Further, the involvement of different products does not foreclose

commonality of issues, and thus, centralization. Centralization was granted in *In re Allergan Biocell Textured Breast Implant Litigation* even where the application included **eight (8)** different products with over fifty **(50) distinct styles**. See Ex. C.

Further, in *In Re Davol*, the Judicial Panel considered actions involving numerous different models of hernia mesh with vastly different designs, different constituent materials, different indications for use, and different anatomical implant sites. Nonetheless, the Panel found that "[c]entralization will eliminate duplicative discovery; prevent inconsistent pretrial rulings; and conserve the resources of the parties, their counsel, and the judiciary." 316 F. Supp. 3d 1380 (J.P.M.L. 2018). See also *In re Exactech Polyethylene Orthopedic Prod. Liab. Litig.*, MDL No. 3044, 2022 WL 5408779 (J.P.M.L. Oct. 7, 2022) (centralizing cases 27 pending cases involving polyethylene liners of numerous models of hip, knee, and ankle implants).

The commonalities among the products at issue and the injuries they cause are greater in this case, and the differences fewer, than many other litigations that have been deemed to warrant centralization. In light of this, centralization will promote efficient adjudication of these cases and conservation of judicial resources as well as those of the parties, and the Bard Implanted Port litigation be designated as Multi-County Litigation.

**B. Centralization will promote judicial efficiency and serve the convenience of the parties and the witnesses by avoiding duplicative discovery and inconsistent rulings.**

Coordination of these Actions will avoid unnecessarily duplicative discovery across multiple Actions and eliminate potentially conflicting or inconsistent rulings. As described herein, these Actions will turn upon common questions of fact. The common questions to every Action will be answered through fact and expert discovery that will likely be extensive,

expensive, and time-consuming. The likely number of cases involving these products makes centralization critical as more than 300,000 implanted port products are used on patients in the United States each year. Plaintiffs with Actions in this litigation will seek substantially the same discovery from defendants; review the same documents produced in discovery; take depositions of the same corporate officers and other witness, as well the same or substantially similar expert witnesses; and will involve the same questions of law surrounding expert qualifications. Centralization and coordination of these Actions will avoid piecemeal litigation and discovery and serve to lessen these burdens on the parties, the witnesses, and the courts by preventing inconsistent pretrial rulings, eliminating duplicative discovery and motion practice, and promoting convenience, efficiency, and the conservation of judicial resources.

Defendants responded in opposition to Plaintiffs' initial MCL application arguing that informal coordination is a sufficient alternative to the advantages of centralization. However, informal coordination is not practical or feasible due to the number of related cases that will continue to be filed. There are presently 41 cases filed, assigned to two different Law Division Judges. Many of those cases have motions to dismiss filed based on statute of limitations and forum non conveniens before any discovery has been exchanged at all. There is a strong potential for inconsistent rulings if these cases are not centralized, even if one judge were to coordinate informally. In addition, the expenditure of judicial resources, let alone the resources of the parties, is exponentially greater if these cases are not centralized. At present, the law firm of the undersigned, and numerous other law firms, have filed, and continue to investigate, a large number of similar cases, many of which will eventually be filed in New Jersey. Moreover, the number of law firms investigating and filing similar cases has only increased and will continue to do so in the foreseeable future.

Further, there are precipitating factors which have created the environment in which the volume of cases will continue to grow. Prominent among them is a large-scale study<sup>2</sup> published in 2021 which shed light on the risks associated with products such as those at issue in this litigation. The Khalid study examined a population of 93,756 Medicare-eligible patients who had been implanted with a port catheter device and included a 5-year follow-up period. Plaintiffs intend to show that these risk were known to and concealed by Defendants for many years. Owing to the dominant market share which Defendants have in the vascular access market, the majority of the patients in that study were likely implanted with one of Defendants' port products.

**C. Defense Counsel are Already Treating these Cases as Consolidated and Coordinated Actions.**

McCarter & English, counsel for Defendants, have already begun to treat these actions as consolidated and coordinated actions. In March of 2024, the parties entered into identical consent orders drafted by Defendants, allowing for the filing of amended complaints in four of the actions listed in the list of attached cases, Exhibit B: *C.R.W. a minor at law, by and through her representative Latanya DeFreese v. C.R. Bard, Inc., et al.*, Docket No. BER-L-5014-23; *Robert Trump v. C.R. Bard, Inc., et al.*, Docket No. BER-L-5017-23; *Jeanne Hyder-Dodd v. C.R. Bard, Inc., et al.*, Docket No. BER-L-5191-23; *Tamika Foster v. C.R. Bard, Inc. et al.*, Docket No. BER-L-6175-23. Thereafter, Defendants sought Plaintiffs' counsel consent to enter duplicative orders in fourteen (14) additional cases listed in Exhibit B. See March 20, 2024 e-mail of Edward J. Fanning and March 25, 2024 e-mail of Ryan Savercool,

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<sup>2</sup> Khalid SI, Maasarani S, Shanker RM, Wiegmann AL, Wu R, Skertich NJ, Terranella SL, DeCesare L, Chan EY. Outcomes following port-a-catheter placement in the Medicare population. *Surg Open Sci.* 2020 Nov 11

attached hereto as **Exhibit G**. Defense counsel's identical treatment of these cases shows that Defendants have implicitly accepted the merits of consolidation and coordination of the Actions, which militates heavily in favor of centralization. However, neither sporadic last-minute agreements among counsel, nor informal coordination by a court, is a proper substitute for centralization by this court. The specter of having to proceed with pretrial discovery, motion practice, and expert discovery in 41 separate cases (which number is certain to grow soon), is an occurrence which should be avoided at all possible cost.

**THESE ACTIONS SHOULD BE CENTRALIZED IN BERGEN COUNTY**

Pursuant to Directive #02-19, issues of fairness, geographical location of the parties and attorneys, and the existing civil and mass tort caseload in the vicinage are considered when determining the vicinage to assign a particular mass tort for centralized management.

Each of the implanted port product cases identified in Exhibit B are already pending in Bergen County. Moreover, Defendants Bard Access Systems, Inc. and Becton Dickinson and Company both maintain a principal place of business in Franklin Lakes, Bergen County, New Jersey. Therefore, Bergen County would be the most convenient location for Defendants and their corporate witnesses to attend court proceedings. Accordingly, Bergen County is the most logical and fair vicinage for these Actions to be centralized.

Defendants have argued in their opposition to Plaintiffs' initial motion that Atlantic County is a more suitable forum because it has a smaller backlog of cases than Bergen County. However, this does not mean that Atlantic County will be the more efficient forum. For example, between 2020 and 2021, Atlantic County saw a **75% drop** in resolution of MCL cases, resolving only 69 cases between 2021 and 2022. *See* 2021-2022 Annual Report of the Administrative Director of the Courts, p. 51, attached hereto as **Exhibit H**. Across all counties and case types in

New Jersey, this is the largest productivity drop between 2020 and 2022. Ex. H. Comparatively, Bergen County resolved approximately 1,400 cases in both 2020 and 2021. *Id.* Therefore, the parties appear to be more likely to achieve efficient resolution of these cases in Bergen County.

However, Plaintiffs respectfully suggest that MCL centralization should be granted, and this court will make the appropriate assignment to one of the three MCL venues.

**THE UNDERSIGNED AND JENNIFER ELWELL SHOULD BE  
APPOINTED AS CO-LEADS OF THE NEW JERSEY MCL**

On September 18, 2023, the Hon. David G Campbell, Senior United States District Judge for the District of Arizona, held the first case management conference pursuant to the directives received from the JPMDL. Judge Campbell issued an order dated September 19, 2023, appointing the undersigned to the Plaintiff's Executive Committee and as New Jersey Liaison to the District of Arizona. A copy of the September 19, 2023 Order is attached hereto as **Exhibit I**. During the conference, I answered Judge Campbell's questions about New Jersey MCL procedure and Judge Campbell stated that he expected there to be a high degree of coordination with the New Jersey Court. Judge Campbell further appointed Jennifer Elwell, Esquire as a member of the Plaintiffs Steering Committee. *Id.*

My resume is attached hereto as **Exhibit J**. As this Court will note, I have 35 years of experience in the areas of complex civil litigation and mass torts. I have served as liaison counsel in several New Jersey MCL's, and have served as lead, co-lead and Steering Committee member on numerous mass torts and class actions. Ms. Elwell is similarly experienced, as her resume attached hereto as **Exhibit K** demonstrates. Each of us has the experience, resources and time to devote to ensure that this MCL is organized, streamlined and efficient. Each of us also has the resources of much larger firms, and the support staff necessary to devote to this project. Each of

us is ready and able to answer any questions which this court or the transferee MCL court might have.

**PENDING MOTIONS TO DISMISS SHOULD BE  
STAYED UNTIL THIS APPLICATION IS DECIDED**

As of the date of this application, Defendants have filed motions to dismiss thirty-one (31) of the cases listed in Exhibit B. Plaintiff has responded in opposition to many of the motions. The remaining motions seek dismissal primarily on *forum non conveniens* grounds and argue that, despite Defendants Beckton, Dickinson and Company and C.R. Bard's principal places of business being in Bergen County, New Jersey, significant sources of proof exist outside of the State, making venue in New Jersey inappropriate. Plaintiff has proposed to the Law Division Judges that all currently pending motions to dismiss be stayed until such time that a decision is made on Plaintiffs' present MCL application, so that the *forum non conveniens* issue raised by Defendants may be resolved on a consolidated, rather than piecemeal basis, to avoid the risk of inconsistent rulings.

**CONCLUSION**

Pursuant to the foregoing, Plaintiffs respectfully request that the Bard Implanted Port litigation be designated as Multi-County Litigation in the Bergen County Superior Court pursuant to R. 4:48A, and that the undersigned and Jennifer Elwell be appointed as co-lead counsel.

Respectfully submitted,  
**JAVERBAUM WURGAFT HICKS  
KAHN WIKSTROM & SININS, P.C.**

*s/ Michael A. Galpern*

**MICHAEL A. GALPERN, ESQUIRE**

MAG/mlc

Enclosures

Cc: Melissa Czartoryski, Chief, Civil Court Programs (w/encl)  
Hon. Gregg A. Padovano, JSC  
Ed Fanning, Esquire (via email)

# **EXHIBIT A**



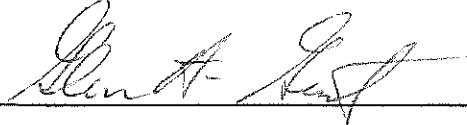
## NOTICE TO THE BAR

### DENIAL OF APPLICATION FOR MULTICOUNTY LITIGATION DESIGNATION OF NEW JERSEY STATE COURT CASES INVOLVING BARD IMPLANTED PORT CATHETER PRODUCTS

A previous Notice to the Bar sought comments on an application for designation as Multicounty Litigation (MCL) of New Jersey state cases against manufacturer C.R. Bard Inc., Bard Access Systems Inc., and Becton Dickinson and Company alleging injuries as a result of implantation of Bard Implanted Port Catheter Products. That application was submitted pursuant to Rule 4:38A and the Multicounty Litigation Guidelines and Criteria for Designation (Revised) as promulgated by Directive #02-19. This Notice is to advise that the Supreme Court, after considering the application and all comments received, has determined not to grant the application. The Court based its denial on the limited number of cases at present. Accordingly, all cases involving Bard Implanted Port Catheter Products should continue to be filed in the appropriate counties of venue.

This Notice will also be posted in the Multicounty Information Center (<https://www.njcourts.gov/attorneys/multicounty-litigation>) on the Judiciary's website ([njcourts.gov](http://njcourts.gov)).

Questions concerning this matter may be directed to Melissa Czartoryski, Esq., Chief, Civil Court Programs, Administrative Office of the Courts, Hughes Justice Complex, P.O. Box 981, Trenton, New Jersey 08625-0981; telephone (609) 815-2900 ext. 54901; e-mail address: [Melissa.Czartoryski@njcourts.gov](mailto:Melissa.Czartoryski@njcourts.gov).



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Glenn A. Grant, J.A.D.  
Acting Administrative Director of the Courts

Dated: January 29, 2024

# **EXHIBIT B**

**Complete List of Filed Cases**

	Caption	Docket No.	Date Filed
1	<i>C.R.W. a minor at law, by and through her representative Latanya DeFreese v. C.R. Bard, Inc., et al.</i>	BER-L-5014-23	09/18/2023
2	<i>Robert Trump v. C.R. Bard, Inc., et al.</i>	BER-L-5017-23	09/18/2023
3	<i>Jeanne Hyder-Dodd v. C.R. Bard, Inc., et al.</i>	BER-L-5191-23	09/27/2023
4	<i>Mary Ann Elledge v. C.R. Bard, Inc., et al.</i>	BER-L-5246-23	09/29/2023
5	<i>Josephine Leddick v. C.R. Bard, Inc., et al</i>	BER-L-6000-23	11/06/2023
6	<i>Tamika Foster v. C.R. Bard, Inc. et al</i>	BER-L-6175-23	11/15/2023
7	<i>Emmali Richmond v. C.R. Bard, Inc., et. al.</i>	BER-L-6208-23	11/16/2023
8	<i>Christy Matthews v. C.R. Bard, Inc., et. al.</i>	BER-L-6207-23	11/16/2023
9	<i>Charles Ronnenberg v. C.R. Bard, Inc., et. al.</i>	BER-L-6569-23	12/7/2023
10	<i>Connie Propst v. C.R. Bard, Inc., et. al.</i>	BER-L-6567-23	12/7/2023
11	<i>Virginia Blush v. C.R. Bard, Inc., et. al.</i>	BER-L-6568-23	12/7/2023
12	<i>Charmel Lewis v. C.R. Bard, Inc., et. al.</i>	BER-L-6561-23	12/11/2023
13	<i>Gladys Ridgeway v. C.R. Bard, Inc., et. al.</i>	BER-L-6560-23	12/11/2023
14	<i>Lisa Pascoe v. C.R. Bard, Inc., et. al.</i>	BER-L-6637-23	12/11/2023
15	<i>Caroline Boothe v. C.R. Bard, Inc., et. al.</i>	BER-L-102-24	1/5/2024
16	<i>Brenda Miller v. C.R. Bard, Inc., et. al.</i>	BER-L-990-24	2/14/2024
17	<i>Darrell McQuilling v. C.R. Bard, Inc., et. al.</i>	BER-L-989-24	2/14/2024
18	<i>Courtney Glasco v. C.R. Bard, Inc., et. al.</i>	BER-L-1050-24	2/16/2024
19	<i>Monica Reed v. C.R. Bard, Inc., et. al.</i>	BER-L-1048-24	2/16/2024
20	<i>Amanda Marie Rix v. C.R. Bard, Inc., et. al.</i>	BER-L-1581-24	3/13/2024
21	<i>Jill Jones v. C.R. Bard, Inc., et. al.</i>	BER-L-1580-24	3/13/2024
22	<i>Dianna Gauthier v. C.R. Bard, Inc., et. al.</i>	BER-L-1582-24	3/13/2024
23	<i>Timothy Nutter v. C.R. Bard, Inc., et. al.</i>	BER-L-1616-24	3/15/2024
24	<i>Judy Rogers v. C.R. Bard, Inc., et. al.</i>	BER-L-1617-24	3/15/2024
25	<i>Mandy Savage v. C.R. Bard, Inc., et. al.</i>	BER-L-1618-24	3/15/2024
26	<i>Alice Nesta v. C.R. Bard, Inc., et. al.</i>	BER-L-1696-24	3/19/2024
27	<i>Janis Sambataro v. C.R. Bard, Inc., et. al.</i>	BER-L-1699-24	3/19/2024
28	<i>Angela Workman v. C.R. Bard, Inc., et. al.</i>	BER-L-2063-24	4/8/2024
29	<i>Joyce Boyd-Rodriguez v. C.R. Bard, Inc., et. al.</i>	BER-L-1943-24	4/1/2024
30	<i>Renard Jackson v. C.R. Bard, Inc., et. al.</i>	BER-L-1942-24	4/1/2024
31	<i>Bernice Stewart v. C.R. Bard, Inc., et. al.</i>	BER-L-1941-24	4/1/2024

32	<i>Katrina Laird v. C.R. Bard, Inc., et. al.</i>	BER-L-2065-24	4/8/2024
33	<i>Selena Parker v. C.R. Bard, Inc., et. al.</i>	BER-L-2064-24	4/8/2024
34	<i>Tammi Lewis v. C.R. Bard, Inc., et. al.</i>	BER-L-2362-24	4/19/2024
35	<i>Kristine Clisham v. C.R. Bard, Inc., et. al.</i>	BER-L-2618-24	5/3/2024
36	<i>Theresa Duncan v. C.R. Bard, Inc., et. al.</i>	BER-L-2633-24	5/3/2024
37	<i>Heather Redderson v. C.R. Bard, Inc., et. al.</i>	BER-L-2637-24	5/3/2024
38	<i>Cynthia Brashier v. C.R. Bard, Inc., et. al.</i>	BER-L-2620-24	5/3/2024
39	<i>Cristina Coleman v. C.R. Bard, Inc., et. al.</i>	BER-L-2726-24	5/8/2024
40	<i>Jeanette Johnson v. C.R. Bard, Inc., et. al.</i>	BER-L-2725-24	5/8/2024
41	<i>Robert Walters v. C.R. Bard, Inc., et. al.</i>	BER-L-2724-24	5/8/2024

# **EXHIBIT C**

## NOTICE TO THE BAR

### MULTICOUNTY LITIGATION – DESIGNATION OF ALLERGAN BIOCELL TEXTURED BREAST IMPLANT LITIGATION AS MCL

A previous Notice to the Bar requested comments on an application for multicounty litigation (MCL) designation of New Jersey state-court litigation alleging injuries due to implantation of **Allergan Biocell Textured Breast Implants**. This Notice is to advise that the Supreme Court, after considering the application and the comments received, has determined to designate cases involving allegations against **Allergan, Inc., and Allergan USA, Inc.** as multicounty litigation. The Court has assigned this MCL to Bergen County for centralized case management by Superior Court Judge Rachelle Harz.

Published with this Notice is the Supreme Court's May 5, 2020 Order. This Order is posted in the Multicounty Litigation Center <http://www.njcourts.gov/attorneys/mcl/index/html> on the Judiciary's website ([www.njcourts.gov](http://www.njcourts.gov)). Judge Harz's Initial Case Management Order will be posted in the Multicounty Litigation Center.

Questions concerning this matter may be directed to Melissa A. Czartoryski, Chief, Civil Practice Division, Administrative Office of the Courts, Hughes Justice Complex, P. O. Box 981, Trenton, New Jersey 08625-0981; telephone: (609) 815-2900 ext. 54901; e-mail address: [Melissa.Czartoryski@njcourts.gov](mailto:Melissa.Czartoryski@njcourts.gov).



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Glenn A. Grant, J.A.D.  
Acting Administrative Director of the Courts

Dated: June 8, 2020

## SUPREME COURT OF NEW JERSEY

On application made pursuant to Rule 4:38A and the Multicounty Litigation Guidelines and Criteria for Designation (Revised), as promulgated by Directive #02-19 in accordance with that Rule, it is hereby ORDERED that all pending and future New Jersey state court actions against Allergan, Inc., and Allergan USA, Inc., alleging personal injuries as a result of use of Allergan Biocell Textured Breast Implants, be designated as multicounty litigation ("MCL") for centralized management purposes; and

It is FURTHER ORDERED that any and all such complaints that have been filed in the various counties and that are under or are awaiting case management and/or discovery shall be transferred from the county of venue to the Superior Court, Law Division, Bergen County and that, pursuant to N.J. Const. (1947), Art.VI, sec.2, par.3, the provisions of Rule 4:3-2 governing venue in the Superior Court are supplemented and relaxed so that all future such complaints, no matter where they might be venued, shall be filed in Bergen County; and

It is FURTHER ORDERED that Superior Court Judge Rachelle Harz shall oversee management and trial issues for such cases and may, in her discretion, return such cases to the original county of venue for disposition, and

It is FURTHER ORDERED that no Mediator or Master may be appointed in this litigation without the express prior approval of the Chief Justice.

For the Court,

A handwritten signature in black ink, appearing to be "S. R. Harz", written over a horizontal line.

Chief Justice

Dated: May 5, 2020

CIVIL

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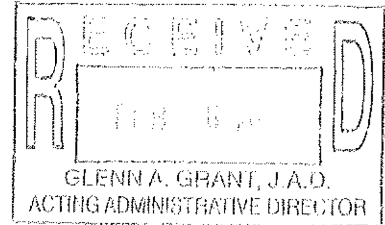
\*Certified by the Supreme Court of  
New Jersey as a Civil Trial Attorney

February 5, 2020

\*\*Member of N.J. & N.Y. Bars

**Via Overnight Delivery**

Hon. Glenn A. Grant, J.A.D.  
Acting Administrative Director of the Courts  
Administrative Office of the Courts of the State of New Jersey  
Richard J. Hughes Justice Complex  
25 W. Market Street  
Trenton, New Jersey 08625



**Re: Application Pursuant to Rule 4:38A to Designate: In re Allergan Biocell  
Textured Breast Implant Litigation as a Multicounty Litigation for  
Centralized Management.**

Dear Judge Grant:

Plaintiffs respectfully submit this letter application requesting the designation of a Multi-County Litigation ("MCL") for centralized management titled: In re Allergan Biocell Textured Breast Implant Litigation. Plaintiffs request that the MCL be assigned to the Honorable Rachelle L. Harz, J.S.C., in Bergen County, where two of the filed cases are currently pending.

Five cases have currently been filed in New Jersey by Mazie Slater, in Bergen County, Morris County, and Union County. A sixth case has been filed by another law firm in Morris County. Mazie Slater will be filing at least five additional cases in the next few days, and we have been advised that a number of additional cases will soon be filed by other law firms in the Superior Court.

In addition, a federal MDL has already been designated and assigned to the Honorable Brian R. Martinotti, U.S.D.J. in the United States District Court for the District of New Jersey, in Newark, as discussed below.



## **BACKGROUND**

This application addresses six currently pending cases identified in the Schedule of Actions attached as **Exhibit "A"** ("Actions") filed in the Superior Court of New Jersey, and potentially hundreds of additional cases that are expected to be filed in New Jersey. Specifically, these Actions involve claims by women who have been implanted with textured breast expanders and textured breast implants (collectively referenced herein as the "Biocell Products") that were manufactured, marketed and sold by defendants Allergan, Inc., and Allergan USA, Inc., who have their headquarters in Madison, New Jersey and Allergan PLC, with its US headquarters located in Madison, New Jersey (collectively, "Allergan"). The Actions involve claims of failure to warn, breach of express warranty, negligence and punitive damages. The recalled Biocell Products at issue include:

**Allergan Natrelle Saline-Filled Breast Implants** (formerly McGhan RTV Saline-Filled Mammary Implant) approved under P990074. The following are the textured styles:

- Style 163: BIOCELL Textured Shaped Full Height, Full Projection Saline Breast Implants
- Style 168: BIOCELL Textured Round Moderate Profile Saline Breast Implants, also referred to as 168MP (168 Moderate Profile)
- Style 363: BIOCELL Textured Shaped Moderate Height, Full Projection Saline Breast Implants, Allergan catalog includes 363LF, or 363 Low Height Full Projection
- Style 468: BIOCELL Textured Shaped Full Height Moderate Projection Saline Breast Implants

**Allergan Natrelle Silicone-Filled Textured Breast Implants** (formerly Inamed Silicone-Filled Breast Implants) approved under P020056. The following are the textured styles:

- Style 110: BIOCELL Textured Round Moderate Projection Gel Filled Breast Implants
- Style 115: BIOCELL Textured Round Midrange Projection Gel Filled Breast Implants
- Style 120: BIOCELL Textured Round High Projection Gel Filled Breast Implants
- Style TRL: Natrelle Inspira BIOCELL Textured Responsive Silicone-Filled Breast Implants
- Style TRLP: Natrelle Inspira BIOCELL Textured Responsive

- Silicone-Filled Breast Implants
- Style TRM: Natrelle Inspira BIOCELL Textured Responsive Silicone-Filled Breast Implants
- Style TRF: Natrelle Inspira BIOCELL Textured Responsive Silicone-Filled Breast Implants
- Style TRX: Natrelle Inspira BIOCELL Textured Responsive Silicone-Filled Breast Implants
- Style TCL: Natrelle Inspira BIOCELL Textured Cohesive Silicone-Filled Breast Implants
- Style TCLP: Natrelle Inspira BIOCELL Textured Cohesive Silicone-Filled Breast Implants
- Style TCM: Natrelle Inspira BIOCELL Textured Cohesive Silicone-Filled Breast Implants
- Style TCF: Natrelle Inspira BIOCELL Textured Cohesive Silicone-Filled Breast Implants
- Style TCX: Natrelle Inspira BIOCELL Textured Cohesive Silicone-Filled Breast Implants
- Style TSL: Natrelle BIOCELL Textured Soft Touch Silicone-Filled Breast Implants
- Style TSLP: Natrelle BIOCELL Textured Soft Touch Silicone-Filled Breast Implants
- Style TSM: Natrelle BIOCELL Textured Soft Touch Silicone-Filled Breast Implants
- Style TSF: Natrelle BIOCELL Textured Soft Touch Silicone-Filled Breast Implants
- Style TSX: Natrelle BIOCELL Textured Soft Touch Silicone-Filled Breast Implants

**Natrelle 410 Highly Cohesive Anatomically Shaped Silicone Filled Breast Implants** approved under P040046. The following are the textured styles:

- Style 410FM
- Style 410FF
- Style 410MM
- Style 410 MF
- Style 410 FL
- Style 410 ML
- Style 410 LL
- Style 410 LM
- Style 410 LF
- Style 410 FX

- Style 410 MX
- Style 410 LX

**Allergan Natrelle Dual-Gel styles LX, MX, and FX.**

**Allergan Natrelle Komuro breast implants styles KML, KMM, KLL, and KLM.**

**Allergan Natrelle Ritz Princess breast implants styles RML, RMM, RFL, and RFM.**

**Allergan Natrelle 150 Full Height and Short Height double lumen implants.**

**Allergan tissue expanders for the breast** that have BIOCELL texturing originally cleared as:

- Natrelle 133 Plus Tissue Expander (K143354)
- Natrelle 133 Tissue Expander with Suture Tabs (K102806)

On May 10, 2000, Allergan was granted premarket approval (“PMA”) by the U.S. Food and Drug Administration (“FDA”) to market the first segment of the line of Biocell Products. Subsequently, PMA was granted on November 17, 2006 and February 20, 2013, for additional segments of the BIOCELL line. On July 24, 2019, Allergan announced a worldwide recall and discontinuation of marketing of the Biocell Products. The FDA called for the action because Allergan’s Biocell Products were associated with and believed to have caused breast implant-associated anaplastic large cell lymphoma (“BIA-ALCL”) with a frequency not reported with other textured implants (the “Recall”). Allergan announced that Biocell Products would no longer be sold or distributed in any market as a result of the Recall.

BIA-ALCL is a type of non-Hodgkin’s lymphoma (cancer of the immune system). In most cases, BIA-ALCL is found in the scar tissue and fluid near the implant, but in some cases, it can spread through the body. BIA-ALCL is treated with surgery to remove the implant and surrounding tissue, and may require treatment including chemotherapy, radiation therapy, and other interventions. The recommended diagnostic testing for BIA-ALCL is invasive. The symptoms of BIA-ALCL may manifest well after the surgical incision has healed, often years after the implant placement, and treatment can be very morbid and damaging, in some cases leading to the need for multiple procedures and operations, and intensive medical and surgical treatment, as well as substantial economic costs. This is all especially devastating for the victims, who in many cases are breast cancer survivors who already underwent mastectomies.

In its July 24, 2019 announcement, the FDA stated that the risk of developing BIA-ALCL with Allergan Biocell Products is about six times that of becoming ill with textured implants from other manufacturers available in the U.S. The FDA noted that more than 80% of known cases of BIA-ALCL were attributed to Allergan implants, and of the 33 deaths caused by BIA-ALCL, 12 of the 13 patients for whom the implant manufacturer was known had an Allergan implant when they were diagnosed. Dr. Amy Abernethy, principal FDA deputy commissioner stated in part: “The FDA has identified this recall as a “Class I recall, the most serious type of recall,” and warns that “use of these devices may cause serious injury or death.”

Plaintiffs allege that as a result of Allergan’s improper conduct, they were implanted with Biocell Products, have suffered severe injuries including development of BIA-ALCL or the risk of developing this potentially fatal cancer, and are now forced to undergo revision surgeries and other treatment, and incur substantial economic costs as well.

As set forth above, the Judicial Panel on Multidistrict Litigation (JPML) assigned the federal Allergan Biocell textured breast implant cases to the Honorable Brian R. Martinotti, U.S.D.J. in the District of New Jersey. See December 18, 2019 JPML Transfer Order entered in Case No. 2921, In Re: Allergan Biocell Textured Breast Implant Products Liability Litigation attached as **Exhibit “B.”** Judge Martinotti conducted the initial case management conference in the newly formed MDL on January 13, 2020 in his courtroom at the United States District Court in Newark, New Jersey. The administrative organization of the MDL has commenced, and the MDL is proceeding.

### ARGUMENT

Plaintiffs submit that this litigation meets the criteria required under Directive #8-12 for Centralized Case Management and respectfully request that these cases be consolidated for case management in the Bergen County Superior Court before the Honorable Rachelle L. Harz, J.S.C. Assignment of this MCL to the Bergen County Superior Court will be most efficient and maximize ease of coordination. For example, assignment of the litigation to Bergen County will allow the MDL and MCL Judges to coordinate in person as needed, including joint hearings if deemed beneficial, and allow attorneys traveling to New Jersey from around the United States to attend case management conferences and hearings on the same or consecutive dates with maximum convenience, including staying in one hotel room for both conferences, for example. In addition, Allergan is located in Madison, New Jersey, so assignment of the litigation to Bergen County will also be most convenient for access to witnesses and documents.

**I. These Cases Satisfy the Criteria for MCL Case Management**

**A. The Allergan breast implant litigation involves a large number of parties that are geographically dispersed around the State of New Jersey and the Country.**

As with other Multicounty Litigations centralized by this Court, the Allergan Biocell Textured Breast Implant Litigation will involve a large number of parties that are geographically dispersed. The current actions filed in New Jersey by Mazie Slater involve plaintiffs who reside in New Jersey, and there will be cases filed on behalf of plaintiffs from throughout the Country. The current New Jersey Actions are filed in multiple vicinages, including Bergen County, Morris County, and Union County. The parties submit that this geographical diversity makes Centralized Management necessary for the efficient handling of this litigation. In all, we expect hundreds of cases to be filed in New Jersey Superior Court, including on behalf of the many anticipated New Jersey plaintiffs who lack federal diversity jurisdiction. Our firm is currently evaluating numerous cases as are other law firms around the country, and we expect that there will be a steadily increasing number of cases filed in the New Jersey courts.

**B. The Allergan breast implant litigation involves many claims with common, recurrent issues of law and fact associated with the Biocell Products that are alleged to cause similar injuries among the plaintiffs.**

The Allergan Biocell Textured Breast Implant Litigation cases involve numerous claims with common, recurrent, and complex issues of law and fact. All of these cases involve the Biocell Products, and include similar claims arising from the unreasonably dangerous, defective design and the undisclosed risks of the Biocell Products. The cases therefore involve similar liability issues including the adequacy of the warnings. By necessity, there will be substantial overlapping discovery across these cases. There are also common injuries and damages flowing therefrom including BIA-ALCL, raising common causation issues, and the need for removal and replacement of the implants. It is critical to ensure consistent rulings on the various complex issues that will arise in these numerous cases from the outset. The Defendants have advised in the MDL that they intend to file motions to dismiss based on express and implied preemption, and similar motions are certain to be filed in the Superior Court. It would be most efficient for these motions to be managed and decided by a single Judge to ensure consistent rulings. Once an MCL is designated, all issues will be decided pursuant to New Jersey law. *In re Accutane Litig.*, 235 N.J. 229 (2018). This maximizes the efficiency of rulings on these complex issues, at the trial and appellate levels.

Centralized management will conserve judicial resources and provide all parties with the benefits of coordinated discovery. Centralization is expected to provide a fair and more convenient, cost effective process for all parties, witnesses, counsel and the Court.

**C. Centralization will help facilitate coordination with the MDL litigation.**

As set forth above, the federal MDL has been assigned to the Honorable Brian R. Martinotti, U.S.D.J. in the District of New Jersey, in Newark, New Jersey. Centralization of these cases will promote effective coordination with the MDL, and thus serves the goal of efficient and inexpensive administration of cases, while maintaining the independence of the New Jersey litigation. For example, Judge Martinotti has scheduled a case management conference once a month for the MDL litigation. Because it is expected that counsel for the parties in the MDL will have substantial overlap with counsel for the parties in the anticipated MCL, case management conferences could be held on the same or consecutive days. That would alleviate unnecessary additional travel and maximize effective coordination with the MDL. Because the MDL is already proceeding, it would be optimal to form and allow the MCL to proceed at a similar pace.

**D. Centralized Management is fair and convenient to the parties, witnesses and counsel.**

Given the large number of parties, witnesses, and counsel, the cases would benefit from centralized management. Centralized management will minimize duplicative practice and inconsistent discovery rulings. Additionally, because the current Actions (and any future actions) are at the earliest stage, centralization will provide the Court with the ability to manage these cases from the beginning in an efficient and effective manner.

**II. All Known Plaintiffs' Counsel Agree that These Cases Should be Assigned to Bergen County for Centralized Management, and that Bergen County is the Most Appropriate Venue for These Cases.**

Issues of fairness, geographical location of the parties and attorneys, and the existing civil and mass tort caseload in the vicinage are considered when determining the vicinage to assign a particular mass tort for centralized management. See Mass Torts-Guidelines and Criteria for Designation, at 2 (Oct. 25, 2007).


In light of the number of cases already pending in Northern New Jersey counties with many more to be filed in the coming days and weeks, and that the federal MDL is venued in Newark, New Jersey, it is both logical and efficient for the MCL to be assigned to Judge Harz in Bergen

County. Moreover, because Allergan's principal place of business is located in Morris County, centralization in nearby Bergen County would be the most convenient location for Allergan witnesses and counsel to attend proceedings, and to coordinate court appearances with depositions as discovery proceeds. In addition, though we do not have the exact case numbers, it is our understanding that the pelvic mesh MCL's assigned to the Bergen County Superior Court which previously numbered in excess of 10,000 cases have now been significantly reduced.

We have spoken to known counsel who are in the process of filing these cases, and have attempted to speak with counsel in the Viola case but have not received a response. The counsel we have spoken to are in agreement with this application. Accordingly, it is both logical and fair to the litigants for these cases to proceed in Bergen County for centralized management. A copy has been sent to Defendant's New Jersey counsel in the MDL, who we have reached out to, as well.

#### **CONCLUSION**

In light of all the factors and information discussed above, the Plaintiffs respectfully request that pursuant to Rule 4:38A, the Allergan Biocell Textured Breast Implant Litigation be designated as Multicounty Litigation for Centralized Management and be assigned to the Honorable Rachelle L. Harz, J.S.C. in the Bergen County Superior Court, for efficient and effective administration.

By:   
Adam M. Slater, Esq. (ID#: #046211993)  
Matthew R. Mendelsohn, Esq. (ID#: 015582005)  
**MAZIE SLATER KATZ & FREEMAN, LLC**  
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cc: Timothy I. Duffy, Esq. (via email)  
Margaret T. Korgul, Esq. (via email)

## Schedule of Actions

E.K. and M.K. v. Allergan, Inc., et als., Docket No. BER-L-472-20;

C.D. v. Allergan, Inc., et als., Docket No. BER-L-870-20;

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C.D. and J.D. v. Allergan, Inc., et als., Docket No. UNN-L-281-20;

A.N. and G.P. v. Allergan, Inc., et als., Docket No. UNN-L-282-20;

C.M. v. Allergan, Inc., et als., Docket No. UNN-L-305-20;

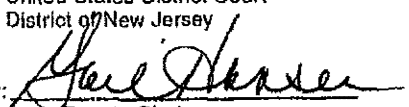
Viola v. Allergan PLC, et als., Docket No. MRS-L-252-20



I HEREBY CERTIFY that the above and foregoing is a true and correct copy of the original on file in my office.

ATTEST  
WILLIAM T. WALSH, Clerk  
United States District Court  
District of New Jersey

**UNITED STATES JUDICIAL PANEL  
on  
MULTIDISTRICT LITIGATION**

By:   
Deputy Clerk

**IN RE: ALLERGAN BIOCELL TEXTURED BREAST IMPLANT  
PRODUCTS LIABILITY LITIGATION**

MDL No. 2921

**TRANSFER ORDER**

**Before the Panel:** Plaintiffs in two actions move under 28 U.S.C. § 1407 to centralize this litigation in the Central District of California or, alternatively, the Middle District of Tennessee. This litigation currently consists of four actions pending in four districts, as listed on Schedule A.<sup>1</sup> Since the filing of the motion, the Panel has been notified of 25 related federal actions.<sup>2</sup>

All responding parties support or do not oppose centralization, but disagree on the transferee district. The Allergan defendants<sup>3</sup> request centralization in the District of New Jersey. Responding plaintiffs variously propose the Central District of California, the Southern District of New York, the Southern District of Florida, and the District of Kansas.

On the basis of the papers filed and the hearing session held, we find that these actions involve common questions of fact, and that centralization will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. All actions arise out of Allergan's announcement on July 24, 2019, of a voluntary worldwide recall of its BIOCELL textured breast implants and tissue expanders. The announcement followed the U.S. Food and Drug Administration's request to initiate the recall based on the risk of breast-implant associated anaplastic large cell lymphoma (BIA-ALCL) associated with the products.<sup>4</sup> All actions share complex factual questions arising from the allegation that Allergan's BIOCELL textured breast implants and tissue expanders significantly increase the risk of developing BIA-ALCL, and that Allergan failed to warn the FDA, patients, and healthcare providers of this risk. The common factual questions include: (1) whether BIOCELL textured breast implants and tissue expanders can cause BIA-ALCL; (2) whether defendants knew or should have known of the risk of BIA-ALCL; (3) whether they provided adequate warnings as to the risk; and (4) the adequacy of defendants' product

<sup>1</sup> A fifth action on the motion for centralization was voluntarily dismissed during the pendency of the motion.

<sup>2</sup> The related actions are pending in fourteen additional districts. These and any other related actions are potential tag-along actions. See Panel Rules 1.1(h), 7.1 and 7.2.

<sup>3</sup> Allergan, Inc., Allergan USA, Inc., and Allergan plc.

<sup>4</sup> According to the FDA, BIA-ALCL is a type of non-Hodgkin's lymphoma, a cancer of the immune system.

-2-

design, testing, and manufacturing.<sup>5</sup> Centralization will eliminate duplicative discovery; prevent inconsistent pretrial rulings, especially with respect to class certification and *Daubert* motions; and conserve the resources of the parties, their counsel and the judiciary.

We conclude that the District of New Jersey is an appropriate transferee forum. Allergan USA, Inc., has its headquarters and principal place of business in this district, and represented at oral argument that significant common evidence, including witnesses, will be located there. Further, centralization in the District of New Jersey enables us to assign this litigation to Judge Brian R. Martinotti, an experienced transferee judge with the ability and willingness to manage this litigation. We are confident he will steer this matter on a prudent course.

IT IS THEREFORE ORDERED that the actions listed on Schedule A and pending outside the District of New Jersey are transferred to the District of New Jersey and, with the consent of that court, assigned to the Honorable Brian R. Martinotti for coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Karen K. Caldwell

Chair

Ellen Segal Huvelle  
Catherine D. Perry  
Matthew F. Kennelly

R. David Proctor  
Nathaniel M. Gorton  
David C. Norton

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<sup>5</sup> We find it unnecessary to include “Anaplastic Large Cell Lymphoma” in the MDL caption, as defendants request. It is clear from the face of this order that the common factual issues in this MDL concern the alleged risk of ALCL – and specifically, BIA-ALCL – associated with the recalled products.

**IN RE: ALLERGAN BIOCELL TEXTURED BREAST IMPLANT  
PRODUCTS LIABILITY LITIGATION**

MDL No. 2921

**SCHEDULE A**

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Central District of California

A.B., ET AL. v. ALLERGAN, INC., ET AL., C.A. No. 8:19-01651

Central District of Illinois

TAUBEN v. ALLERGAN, INC., ET AL., C.A. No. 2:19-02257

Southern District of New York

DOE 1, ET AL. v. ALLERGAN, INC., ET AL., C.A. No. 7:19-09151

Middle District of Tennessee

ZETTLEMOYER v. ALLERGAN, INC., ET AL., C.A. No. 3:19-00866

# **EXHIBIT D**

## NOTICE TO THE BAR

**RE: CENTRALIZED MANAGEMENT OF DEPUY ASR™ HIP IMPLANT LITIGATION**

A previous Notice to the Bar requested comments on an application for mass tort designation of all New Jersey state-court litigation relating to DePuy ASR™ hip implants. The application was submitted pursuant to Court Rule 4:38A and Directive #7-09, the “Revised Mass Tort Guidelines.” This Notice is to advise that the Supreme Court, after considering the application and the comments received, has determined to assign all pending and future New Jersey state-court litigation involving DePuy ASR™ hip implants to Bergen County (Superior Court Judge Brian R. Martinotti) for centralized management purposes, but not to designate it as a mass tort.

Accordingly, published with this Notice are the Supreme Court’s April 12, 2011 Order and Judge Martinotti’s April 15, 2011 Initial Case Management Order. Both orders also are posted on the Judiciary’s Internet website ([www.njcourts.com](http://www.njcourts.com)) in the Mass Tort Information Center (<http://www.judiciary.state.nj.us/mass-tort/index.htm>).

Questions concerning this matter may be directed to Taironda E. Phoenix, Esq., Staff Attorney, Civil Practice Division, Administrative Office of the Courts, Hughes Justice Complex, P.O. Box 981, Trenton, New Jersey 08625-0981; telephone: (609) 292-8471; email address: [taironda.phoenix@judiciary.state.nj.us](mailto:taironda.phoenix@judiciary.state.nj.us).

/s/ Glenn A. Grant

---

Glenn A. Grant, J.A.D.  
Acting Administrative Director of the Courts

Dated: April 18, 2011

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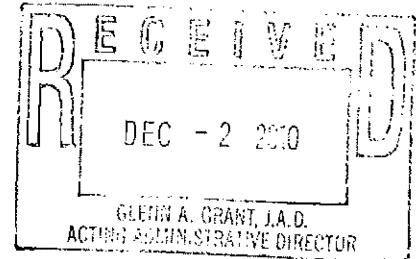
Civil Practice Division

DEC 03 2010

December 1, 2010

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Hon. Glenn A. Grant, J.A.D.  
Acting Administrative Director of the Courts  
Administrative Office of the Courts  
Richard J. Hughes Justice Complex  
25 West Market Street  
P.O. Box 037  
Trenton, New Jersey 08625



Re: **Defendants' Application for Centralized Management of DePuy  
ASR™ Hip Litigation Cases in Middlesex County**

Dear Judge Grant:

We represent the defendants DePuy Orthopaedics, Inc. ("DePuy") and Johnson & Johnson in products liability cases recently filed in New Jersey involving the DePuy ASR™ XL Acetabular System ("ASR™ XL System"), a hip implant that was voluntarily recalled in August 2010. To date, over 139 federal cases have been filed involving the ASR™ XL System, which will soon be consolidated in a federal Multi-District Litigation. An additional 42 state court cases have been filed including three in New Jersey. Given the number of patients implanted with the DePuy ASR™ XL System as well as the number of pending cases nationally, more cases are expected to be filed here. To avoid duplicative discovery and inconsistent rulings, and to conserve judicial resources and promote the interests of justice at the outset of these matters, we submit this application to have the DePuy ASR™ Hip Implant Litigation cases in New Jersey

Edward A. Gnamagna, Jr.  
Partner responsible for  
Florham Park Office

Established 1849

# **EXHIBIT E**

**UNITED STATES JUDICIAL PANEL**  
**on**  
**MULTIDISTRICT LITIGATION**

**IN RE: BARD IMPLANTED PORT CATHETER  
PRODUCTS LIABILITY LITIGATION**

MDL No. 3081

**TRANSFER ORDER**

**Before the Panel:**\* Plaintiffs in eight actions move under 28 U.S.C. § 1407 to centralize this litigation in the Western District of Missouri. This litigation consists of ten actions pending in six districts, as listed on Schedule A.<sup>1</sup> Additionally, the Panel has been notified of 38 potential tag-along actions in 25 districts.<sup>2</sup> Plaintiffs in the remaining two constituent actions and four potential tag-along actions support centralization in the Western District of Missouri. Defendants Becton, Dickinson & Co., C.R. Bard, Inc., and Bard Access Systems, Inc., oppose the motion or, alternatively, suggest centralization in the District of Utah or, alternatively, the District of Arizona.

On the basis of the papers filed and the hearing session held, we find that these actions involve common questions of fact, and that centralization in the District of Arizona will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation. All actions can be expected to share factual questions arising from allegations that defendants manufacture the catheter component of their port devices with a concentration of barium sulfate that is too high, which reduces the material integrity of the catheter, and can lead to injuries, including infection, fracture of the catheter, migration of the catheter, and thrombosis. All actions share common issues of fact regarding whether the design of Bard's port catheters involves a concentration of barium sulfate that reduces the material integrity of the catheters and can cause injury, whether defendants adequately tested the devices, and whether defendants adequately monitored and reported adverse events relating to product failures. Centralization offers an opportunity to substantially streamline pretrial proceedings, reduce duplicative discovery and conflicting pretrial obligations, as well as prevent inconsistent rulings on common *Daubert* challenges.

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\* Judge David C. Norton took no part in the decision of this matter.

<sup>1</sup> The Eastern District of Missouri *Cunningham* action originally was filed in the Western District of Missouri, but was transferred to the Eastern District under 28 U.S.C. § 1406(a), as reflected in Schedule A.

<sup>2</sup> These and any other related actions are potential tag-along actions. See Panel Rules 1.1(h), 7.1, and 7.2.



- 2 -

Defendants argue that individual factual issues will predominate with respect to the wide variety of alleged injuries, products, and the timing of each plaintiff's injury. But as we have held, "almost all injury litigation involves questions of causation that are case- and plaintiff-specific. Such differences have not been an impediment to centralization in the past." *In re Wright Med. Tech., Inc., Conserve Hip Implant Prods. Liab. Litig.*, 844 F. Supp. 2d 1371, 1372 (J.P.M.L. 2012). Unlike in *In re Belviq (Lorcaserin HCI) Products Liability Litigation*, cited by defendants, the plaintiffs in the cases now before the Panel allege a common mechanism for their various injuries. See 555 F. Supp. 3d 1369 (J.P.M.L. 2021). "[I]ndividualized factual issues concerning causation," therefore, seem far less likely to "predominate and diminish the potential to achieve significant efficiencies in an MDL." *Id.* at 1370.

Defendants also argue that centralization is unnecessary because they successfully informally coordinated previous similar actions with plaintiffs' counsel, and that those actions resolved early without significant proceedings. While we appreciate defendants' willingness to cooperate, we are persuaded that the current number of involved cases, counsel, and districts would make informal coordination unworkable. There are now nearly 50 actions pending in 28 districts.

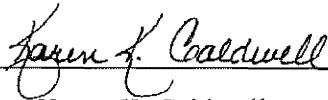
Defendants have represented that many of the cases filed are meritless, that certain plaintiffs' counsel have made false representations as part of an advertising campaign to solicit additional claims, and that creation of an MDL would reward such misconduct and lead to the filing of numerous additional non-meritorious cases. The Panel has rejected similar arguments on multiple occasions and does so again here. See, e.g., *In re Xarelto (Rivaroxaban) Prods. Liab. Litig.*, 65 F. Supp. 3d 1402, 1405 (J.P.M.L. 2014) ("Nor are we persuaded by defendants' related argument that an MDL will generate the filing of voluminous claims without due diligence by plaintiffs' counsel. The Panel often has observed that '[t]he response to such concerns more properly inheres in assigning all related actions to one judge committed to disposing of spurious claims quickly.'") (quoting *In re Seroquel Prods. Liab. Litig.*, 447 F. Supp. 2d 1376, 1378 (J.P.M.L. 2006)); see also *In re Cook Med., Inc., IVC Filters Mktg., Sales Practices & Prods. Liab. Litig.*, 53 F. Supp. 3d 1379, 1381 (J.P.M.L. 2014) ("[T]he transferee court handling several cases in an MDL likely is in a better position—and certainly is in no worse position than courts in multiple districts handling individual cases—to properly address meritless claims. There are many tools a transferee court may use to accomplish this task. And importantly, if defendants believe plaintiffs' counsel are filing frivolous claims, it is incumbent upon defense counsel to bring that concern to the attention of the transferee court, and to propose a process to identify and resolve such claims.").

We select the District of Arizona—where a constituent action is pending—as the transferee district for this nationwide litigation. Defendants represent that Bard Access Systems has a significant business presence in this district, and that relevant witnesses will be located there. The Honorable David G. Campbell presides over MDL No. 2641 – *In re Bard IVC Filters Products Liability Litigation*, involving a different medical device manufactured by Bard. He has ably handled that litigation, and we are confident that he will steer this litigation on a prudent course.

- 3 -

IT IS THEREFORE ORDERED that the actions listed on Schedule A and pending outside the District of Arizona are transferred to the District of Arizona and, with the consent of that court, assigned to the Honorable David G. Campbell for coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in cursive script, reading "Karen K. Caldwell", is positioned above a horizontal line.

Karen K. Caldwell  
Chair

Nathaniel M. Gorton  
Roger T. Benitez  
Madeline Cox Arleo

Matthew F. Kennelly  
Dale A. Kimball

**IN RE: BARD IMPLANTED PORT CATHETER  
PRODUCTS LIABILITY LITIGATION**

MDL No. 3081

**SCHEDULE A**

District of Arizona

PRENTICE v. BECTON, DICKINSON AND COMPANY, ET AL.,  
C.A. No. 2:23-00627

District of Kansas

ELWELL v. BECTON, DICKINSON AND COMPANY, ET AL., C.A. No. 2:23-02197

Eastern District of Missouri

CUNNINGHAM v. BECTON, DICKINSON AND COMPANY, ET AL.,  
C.A. No. 4:23-00981

Western District of Missouri

TERRY v. BECTON, DICKINSON AND COMPANY, ET AL., C.A. No. 4:23-00100  
BELTZ v. BECTON, DICKINSON AND COMPANY, ET AL., C.A. No. 4:23-00264  
ANDERSON v. BECTON, DICKINSON AND COMPANY, ET AL.,  
C.A. No. 4:23-00316  
GROVES v. BARD ACCESS SYSTEMS, INC., ET AL., C.A. No. 5:23-06058  
KELLEY v. C.R. BARD, INC., ET AL., C.A. No. 6:23-03044

District of New Jersey

NELK v. BECTON, DICKINSON AND COMPANY, ET AL., C.A. No. 2:23-01173

District of New Mexico

DIVELBLISS v. BARD ACCESS SYSTEMS, INC., ET AL., C.A. No. 1:22-00601

# **EXHIBIT F**

**UNITED STATES JUDICIAL PANEL**  
**on**  
**MULTIDISTRICT LITIGATION**

**IN RE: BARD IMPLANTED PORT CATHETER  
PRODUCTS LIABILITY LITIGATION**

MDL No. 3081

**TRANSFER ORDER**

**Before the Panel:** Defendants Becton, Dickinson & Company; C.R. Bard, Inc.; Bard Access Systems, Inc.; and Bard Peripheral Vascular, Inc. (together, Bard) move under Panel Rule 7.1 to vacate our order that conditionally transferred the three actions listed on Schedule A to the District of Arizona for inclusion in MDL No. 3081. Plaintiffs oppose the motion.

After considering the argument of counsel, we find that these actions involve common questions of fact with the actions transferred to MDL No. 3081, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. In our order centralizing this litigation, we held that centralization was warranted for actions sharing factual questions arising from allegations that defendants manufacture the catheter component of their port devices with a concentration of barium sulfate that is too high, which reduces the material integrity of the catheter, and can lead to injuries, including infection, fracture of the catheter, migration of the catheter, and thrombosis. *See In re Bard Implanted Port Catheter Prods. Liab. Litig.*, \_\_ F. Supp. 3d \_\_, 2023 WL 5065100 (J.P.M.L. Aug. 8, 2023). Like many plaintiffs in MDL No. 3081, plaintiffs in these three actions allege they were implanted with a Bard implanted port catheter and subsequently suffered an infection. Thus, they allege claims against the same defendants, regarding the same products, and alleging similar injuries as the MDL plaintiffs. The cases therefore will share factual questions regarding, for example, defendants' testing of their implanted port devices and the adequacy of the warnings given about the risk of infection. More specifically, these plaintiffs, like those in MDL No. 3081, allege that defendants' manufacturing process in constructing the catheter component of the devices involves too a high a concentration of barium sulfate particles, which ultimately increases the risk of infection. *See Franks* Compl. at ¶¶ 40-45; *Meadors* Compl. at ¶¶ 42-47; *Hunter* Compl. at ¶¶ 42-47. Transfer therefore is consistent with our order granting centralization, and these actions will involve overlapping discovery and pretrial proceedings.

In opposing transfer, defendants argue that transfer would impermissibly expand the scope of the MDL because these three complaints also include allegations of additional defects in defendants' devices that may account for the infections plaintiffs suffered. Along with the alleged catheter defect, plaintiffs allege that the port reservoir component of the devices at issue was comprised of Polyoxymethylene (POM), which can undergo oxidative degradation, leading to reduction of the mechanical properties of the polymer and the formation of cracks, fissures, and other physical defects. Plaintiffs allege this increases the risk of thrombosis and infection. They further allege that the port reservoir includes three palpation bumps, which can cause undue

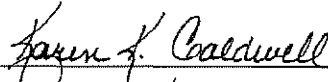
compression on the tissue of the subcutaneous pocket into which the port is placed and lead to ulceration and tissue necrosis. *See, e.g., Franks Compl.* at ¶¶ 18-33.

The addition of these alternative theories of causation does not diminish the benefits of transferring these cases. Whether plaintiffs' infections were caused by a defect in the catheter, in the port reservoir, or both may not be readily known at the time of filing, and may require fact and expert discovery to develop. Moreover, plaintiffs' allegations concerning a port reservoir defect implicate the catheter itself. *See, e.g., Hunter Compl.* at ¶ 29 (alleging that the use of POM in the port reservoir can lead to the "formation of biofilm in the port reservoir and the catheter"); ¶ 33 (alleging that the palpation bumps on the port reservoir can cause undue compression stress, which "leads to ulceration and tissue necrosis which potentiates port and catheter infection"). Defendants suggest that the parties wait for individualized discovery to indicate whether a particular action involves a catheter-related injury and, if so, seek transfer at that time. We do not agree. Requiring the parties and the courts to engage in protracted discovery and other pretrial proceedings outside the MDL while the parties attempt to determine the exact mechanism of causation would negate many of the benefits of Section 1407 transfer. Plaintiffs' injuries are indivisible, and we have previously found that alternative theories of causation of a plaintiff's injury are appropriate to include in an MDL, even where, unlike here, those alternative theories involved a separate product manufactured by a previously unnamed defendant. *See In re Coloplast Corp. Pelvic Support Sys. Prods. Liab. Litig.*, 883 F. Supp. 2d 1348, 1349 (J.P.M.L. 2012) ("[The plaintiff's alleged injuries from the use of Surgimend and the Coloplast product are indivisible, and ... the two products were used in surgical procedures on the plaintiff that were performed back-to-back on the same day.]). We are confident that, to the extent these three cases involve unique issues, "the transferee judge can structure pretrial proceedings so that discovery with respect to such issues can proceed concurrently with discovery on common issues." *Id.*

Although the transferee judge held that plaintiffs could not include allegations regarding the port reservoir defects in their master complaint, he has made no pronouncements on whether these actions and allegations ultimately should be included in the MDL. *See Case Management Order No. 6, MDL No. 3081 (D. Ariz. Nov. 22, 2023), ECF No. 111 at p. 4.* Rather, the court stated that the Panel "should decide in the first instance whether the MDL should be expanded to include new claims involving different defects in a separate product component." *Id.* Indeed, the court noted that "[t]hose allegations can be added later if the Panel expands this MDL to include them." *Id.* That said, if after close scrutiny, the transferee judge determines that continued inclusion of these or any other actions in the MDL is no longer advisable, then the Panel can remand them to their transferor courts with a minimum of delay. *See Panel Rules 10.1-10.3.*

IT IS THEREFORE ORDERED that the actions listed on Schedule A are transferred to the District of Arizona and, with the consent of that court, assigned to the Honorable David G. Campbell for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in cursive script, reading "Karen K. Caldwell".

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Karen K. Caldwell  
Chair

Nathaniel M. Gorton  
David C. Norton  
Dale A. Kimball

Matthew F. Kennelly  
Roger T. Benitez  
Madeline Cox Arleo

**IN RE: BARD IMPLANTED PORT CATHETER  
PRODUCTS LIABILITY LITIGATION**

MDL No. 3081

**SCHEDULE A**

District of Colorado

HUNTER v. BECTON, DICKINSON AND CO., C.A. No. 1:23-03048

District of New Jersey

MEADORS v. BECTON, DICKINSON AND COMPANY, ET AL.,  
C.A. No. 2:23-22267

Northern District of Texas

FRANKS v. BECTON DICKINSON AND COMPANY, ET AL., C.A. No. 3:23-02538



# EXHIBIT G

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**From:** Savercool, Ryan <rsavercool@mccarter.com>  
**Sent:** Monday, March 25, 2024 2:30 PM  
**To:** Michael Galpern; Fanning, Edward J.  
**Cc:** Lauren Goodfellow; Kaplan, Stefanie  
**Subject:** RE: Bard Port Litigation - NJ state court cases  
**Attachments:** Elledge- Proposed Consent Order 3.20.24.docx

[EXTERNAL E-MAIL]

Mike,

Please advise whether you consent to the form and contents of the final proposed consent order.

Because Defendants intend to move to dismiss these cases on forum non conveniens grounds and, based on the number of cases for which this Consent Order would apply, we propose holding off on the filing of any Amended Complaints removing the agreed-upon allegations regarding federal reporting obligations pending the outcome of the motions to dismiss. If you agree to the content of this proposed consent order in Elledge, we will duplicate it for the cases listed below.

Plaintiff	Date filed	Docket number
Elledge, Mary Ann	9/29/2023	BER-L-5246-23
Matthews, Christy	11/16/2023	BER-L-6207-23
Richmond, Emmali	11/16/2023	BER-L-6208-23
Lewis, Charmel	12/6/2023	BER-L-6561-23
Blush, Virginia	12/6/2023	BER-L-6568-23
Propst, Connie	12/6/2023	BER-L-6567-23
Ridgeway, Gladys	12/6/2023	BER-L-6560-23
Ronnenberg, Charles	12/6/2023	BER-L-6569-23
Pascoe, Lisa	12/11/2023	BER-L-6637-23
Boothe, Carolyn	1/5/2024	BER-L-0102-24
McQuilling, Darrell	2/14/2024	BER-L-0989-24
Miller, Brenda	2/14/2024	BER-L-0990-24
Reed, Monica	2/16/2024	BER-L-1048-24

Glasco, Courtney	2/16/2024	BER-L-1050-24
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**From:** Fanning, Edward J. <EFanning@McCarter.com>  
**Sent:** Wednesday, March 20, 2024 11:47 AM  
**To:** Michael Galpern <mgalpern@lawjw.com>  
**Cc:** Lauren Goodfellow <lgoodfellow@lawjw.com>; Savercool, Ryan <rsavercool@mccarter.com>  
**Subject:** Bard Port Litigation - NJ state court cases

[EXTERNAL E-MAIL]

Mike,

Thanks for the call yesterday. Consistent with our discussion, attached are three proposed consent orders for the served New Jersey plaintiff cases that track the agreement in C.R.W., specifically the filing of a First Amended Complaint that removes the PLA-subsumed claims and the allegations regarding federal reporting obligations that were the subject of Defendants’ preemption arguments. Please let us know if we have your consent to get these proposed consent orders on file in Trump, Foster, and Hyder-Dodd.

The fourth proposed consent order (Elledge) is intended to be a model for the non-NJ resident plaintiff cases. Because Defendants intend to move to dismiss these cases on forum non conveniens grounds and based on the number of cases for which this Consent Order would apply, we propose holding off on the filing of any Amended Complaints removing the agreed-upon allegations regarding federal reporting obligations pending the outcome of the motions to dismiss. If you agree to the content of this proposed consent order in Elledge, we will duplicate it for the cases listed below.

If we do not hear from you this week, we will need to proceed with filing our motions in all cases. We have been working cooperatively with you on these motions since the denial of your MCL application. However, the continued delay risks prejudicing Defendants’ rights to defend against these cases.

Plaintiff	Date filed	Docket number
Elledge, Mary Ann	9/29/2023	BER-L-5246-23
Matthews, Christy	11/16/2023	BER-L-6207-23
Richmond, Emmali	11/16/2023	BER-L-6208-23
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Blush, Virginia	12/6/2023	BER-L-6568-23
Propst, Connie	12/6/2023	BER-L-6567-23
Ridgeway, Gladys	12/6/2023	BER-L-6560-23
Ronnenberg, Charles	12/6/2023	BER-L-6569-23
Pascoe, Lisa	12/11/2023	BER-L-6637-23
Boothe, Carolyn	1/5/2024	BER-L-0102-24

McQuilling, Darrell	2/14/2024	BER-L-0989-24
Miller, Brenda	2/14/2024	BER-L-0990-24
Reed, Monica	2/16/2024	BER-L-1048-24
Glasco, Courtney	2/16/2024	BER-L-1050-24

Thanks,

Ed



**Edward Fanning | Partner**

McCarter & English, LLP

Four Gateway Center, 100 Mulberry Street | Newark, NJ 07102

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# EXHIBIT H

# Trial Court Filings, Resolutions and Backlog by County

	Filings			Resolutions			Inventory (Active Cases Pending Within Time Goals)			Backlog (Active Cases Pending Over Time Goals)		
	July 2020 to June 2021	July 2021 to June 2022	percent change	July 2020 to June 2021	July 2021 to June 2022	percent change	June 2021	June 2022	percent change	June 2021	June 2022	percent change
	<b>Atlantic County Total</b>	23,776	26,260	10%	20,191	26,638	32%	8,384	9,023	8%	5,316	4,179
Multi-County Litigation	1,862	1,505	-19%	277	69	-75%	2,624	3,340	27%	1,213	1,972	63%
Non Multi-County Litigation	21,914	24,755	13%	19,914	26,569	33%	5,760	5,683	-1%	4,103	2,207	-46%
<b>Bergen County Total</b>	44,558	43,921	-1%	41,213	49,145	19%	13,280	12,533	-6%	10,925	6,789	-38%
Multi-County Litigation	612	668	9%	1,415	1,378	-3%	839	1,014	21%	4,601	3,719	-19%
Non-Multicounty Litigation	43,946	43,253	-2%	39,798	47,767	20%	12,441	11,519	-7%	6,324	3,070	-51%
<b>Burlington County</b>	26,625	29,379	10%	25,250	30,066	19%	6,156	6,158	0%	1,826	895	-51%
<b>Camden County</b>	40,128	43,372	8%	36,048	45,516	26%	10,048	9,827	-2%	7,254	5,257	-28%
<b>Cape May County</b>	6,549	6,641	1%	5,813	7,030	21%	1,507	1,376	-9%	722	390	-46%
<b>Cumberland County</b>	12,330	13,925	13%	11,281	14,517	29%	2,653	2,697	2%	1,770	1,091	-38%
<b>Essex County</b>	65,523	69,061	5%	53,151	66,327	25%	20,140	20,173	0%	23,356	25,979	11%
<b>Gloucester County</b>	17,179	17,925	4%	16,026	18,507	15%	3,870	3,845	-1%	1,725	1,157	-33%
<b>Hudson County</b>	38,881	39,299	1%	33,873	40,093	18%	10,375	9,781	-6%	7,868	7,433	-6%
<b>Hunterdon County</b>	4,352	4,214	-3%	4,115	4,366	6%	1,036	1,007	-3%	255	238	-7%
<b>Mercer County</b>	21,005	24,102	15%	19,722	24,779	26%	5,646	5,588	-1%	3,264	2,606	-20%
<b>Middlesex County Total</b>	42,922	43,852	2%	38,977	47,204	21%	14,741	13,473	-9%	12,371	10,137	-18%
Multi-County Litigation	993	301	-70%	674	1,112	65%	1,743	883	-49%	4,320	4,373	1%
Non Multi-County Litigation	41,929	43,551	4%	38,303	46,092	20%	12,998	12,590	-3%	8,051	5,764	-28%
<b>Monmouth County</b>	28,534	29,358	3%	26,280	30,945	18%	8,371	8,218	-2%	3,883	2,448	-37%
<b>Morris County</b>	17,217	18,162	5%	15,987	18,539	16%	5,031	5,086	1%	2,150	1,724	-20%
<b>Ocean County</b>	28,725	30,289	5%	27,454	31,718	16%	7,059	7,064	0%	3,421	1,974	-42%
<b>Passaic County</b>	30,608	33,374	9%	26,215	31,328	20%	8,634	9,226	7%	7,687	9,068	18%
<b>Salem County</b>	5,074	5,517	9%	4,482	5,644	26%	1,036	1,113	7%	662	468	-29%
<b>Somerset County</b>	12,796	12,851	0%	11,906	13,244	11%	3,401	3,440	1%	1,464	1,003	-31%
<b>Sussex County</b>	6,347	6,968	10%	6,043	7,023	16%	1,462	1,584	8%	607	433	-29%
<b>Union County</b>	30,097	34,396	14%	28,241	35,641	26%	8,929	9,500	6%	4,627	2,647	-43%
<b>Warren County</b>	5,611	6,396	14%	5,313	6,354	20%	1,083	1,204	11%	450	326	-28%
<b>Total</b>	508,837	539,235	6%	457,581	554,623	21%	142,842	141,916	-1%	101,603	86,242	-15%
Multi-County Litigation	3,467	2,474	-29%	2,366	2,559	8%	5,206	5,237	1%	10,134	10,064	1%
Non Multi-County Litigation	505,370	536,761	6%	455,215	552,064	21%	137,636	136,679	-1%	91,469	76,178	-17%

# **EXHIBIT I**



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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

IN RE: Bard Implanted Port Catheter  
Products Liability Litigation

MDL No. 3081

**CASE MANAGEMENT  
ORDER NO. 1**

(Applies to All Actions)

**I. Plaintiffs' Leadership Counsel Appointments.**

The Court, having considered all of the applications submitted and other relevant information, appoints the following plaintiffs' counsel to leadership positions, as indicated, and to be known as "Plaintiffs' Leadership Counsel":

<b>Plaintiffs' Co-Lead Counsel</b>	
Adam M. Evans	Dickerson Oxtan, LLC 1100 Main St., Ste. 2550 Kansas City, MO 64105
Rebecca Phillips	Lanier Law Firm 10940 W. Sam Houston Pkwy. N., Ste. 100 Houston, TX 77064
Michael Sacchet	Ciresi Conlin, LLP 225 S. 6th St., Ste. 4600 Minneapolis, MN 55402

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<b>Plaintiffs' Executive Committee ("PEC")/Liaison Counsel</b>	
Steve German (Liaison Counsel/Local Counsel in Arizona)	Scout Law Group 11201 N. Tatum Blvd., Ste. 110 Phoenix, AZ 85028
Michael Galpern (NJ State Court Liaison)	Javerbaum Wurgaft Hicks Kahn Wikstrom & Sinins PC 1000 Haddonfield Berlin Rd., Ste. 203 Voorhees, NJ 08043
Anne Schiavone	Holman Schiavone, LLC 4600 Madison Ave., Ste. 810 Kansas City, MO 64112
Stuart Ratzan	Ratzan Weissman & Boldt 2850 Tigertail Ave., Ste. 400 Coconut Grove, FL 33133
Danielle Rogers	Langdon & Emison 911 Main St. Lexington, MO 64067
Larry Taylor	The Cochran Firm – Dallas, PLLC 1825 Market Center Blvd., Ste. 500 Dallas, TX 75207
Thomas Cartmell	Wagstaff & Cartmell, LLP 4740 Grand Ave., Ste. 300 Kansas City, MO 64112
Alex Barlow	Scott & Scott 7718 Wood Hollow Dr., Ste. 105 Austin, TX 78731
Tom Pirtle	Laminack, Pirtle & Martines 5020 Montrose Blvd. Houston, TX 77006
Shanon Carson	Berger Montague 1818 Market St., Ste. 3600 Philadelphia, PA 19103
Roman Balaban	Balaban Law LLC 8055 East Tufts Ave., Ste. 325 Denver, CO 80237

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<b>Plaintiffs' Steering Committee ("PSC")</b>	
Bradley Leger	Leger Ketchum & Cohoon, PLLC 10077 Grogan's Mill Rd., Ste. 325 The Woodlands, TX 77380
Chelsea Dickerson	Dickerson Oxtan, LLC 1100 Main St., Ste. 2550 Kansas City, MO 64105
Gabe Assaad	McDonald Worley 1770 St. James Pl., Ste. 100 Houston, TX 77056
Jenny Elwell	Berger Montague 1818 Market St., Ste. 3600 Philadelphia, PA 19103
Chad Roberts	eDiscovery CoCounsel, PLLC 1 Independent Dr., B1 Jacksonville, FL 32202
Brian Tadtman	Woodworth Law Firm, LLC 7200 W. 132 <sup>nd</sup> St., Ste. 320 Overland Park, KS 66213
Jose Rojas	Levin, Rojas, Camassar & Reck, LLC 40 Russ St. Hartford, CT 06106
Aaron Dickey	Dickey Anderson, LLC 1104 Moorlands Dr. St. Louis, MO 63117
Robert Brown	Robert Brown Law 3225 Aviation Ave., Ste. 101 Miami, FL 33133
Jakob Norman	Trial Lawyers for Justice, P.C. 1700 Koch St., Ste. 5 Bozeman, MT 59715
Ryan Cavanaugh	Constant Legal Group, LLP 737 Bolivar Rd., Ste. 440 Cleveland, OH 44115
Doug Monsour	Monsour Law Firm 404 N Green St Longview, TX 75601

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Jon Conlin	Cory Watson, P.C. 2131 Magnolia Avenue South Birmingham, AL 35205
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Plaintiffs shall add attorney Troy A. Brenes to the Plaintiffs' Executive Committee, and an attorney designated by Mr. Brenes to Plaintiffs' Steering Committee.

**II. Responsibilities.**

**A. Procedural Matters.**

1. As noted in this Court's previous Order Setting Initial Case Management Conference dated August 22, 2023 (Doc. 7), the Clerk of this Court will maintain a Master Docket case file under the style "*In Re: Bard Implanted Port Catheter Products Liability Litigation*" and the identification "MDL No. 3081." Plaintiffs' Lead/Liaison Counsel will be (a) the only attorneys permitted to file in the Master Docket as to all actions, and (b) the only attorneys receiving Notices of Electronic Filing for pleadings and orders filed in the Master Docket for all actions.

2. With regard to the Master Docket, Plaintiffs' Lead/Liaison Counsel shall:
- a. Serve as the recipients for all Court orders.
  - b. Coordinate service and filings for all plaintiffs whether presently included or subsequently added to this MDL.
  - c. Maintain and distribute to co-counsel and to Defendants' Counsel an up-to-date service list.
  - d. Maintain responsibility for service upon all other attorneys and parties as to filings made in the Master Docket. Specifically, Lead/Liaison Counsel shall receive and distribute, to all other Plaintiffs' counsel, pleadings, orders, and motions by email, overnight courier service, or telecopier, within two days after receipt, unless such service has been waived, in writing, by a receiving counsel.
  - e. Coordinate discovery and litigation with similar cases outside of this Court's jurisdiction.

1           3.     Lead/Liaison Counsel is only responsible for service with regard to filings in  
2 the Master Docket. With regard to case-specific filings, all attorneys of record in the  
3 relevant member action will receive a Notice of Electronic Filing from the Court.

4           4.     New counsel for later-filed or later-transferred cases that become part of this  
5 MDL shall be responsible for checking the Master Docket for all orders previously entered  
6 that may have relevance to such new cases.

7           **B.     Responsibilities Specific to Lead/Liaison Counsel.**

8           In addition to the responsibilities identified above, Plaintiffs' Lead/Liaison Counsel  
9 shall:

10          1.     Coordinate the establishment of a document depository, real or virtual, to be  
11 available to all participating plaintiffs' counsel;

12          2.     Maintain and make available to all participating plaintiffs' counsel of record,  
13 at reasonable hours, a complete file of all documents served by or upon each party (except  
14 documents as may be available at a document depository);

15          3.     Prepare agendas for court conferences and periodically report regarding the  
16 status of the case; and

17          4.     Carry out such other duties as the Court may order.

18           **C.     Responsibilities Applicable to all Plaintiffs' Leadership Counsel.**

19           Plaintiffs Leadership Counsel shall have the following responsibilities:

20          1.     Discovery

21           a.     Initiate, coordinate, and conduct all pretrial discovery on behalf of  
22 plaintiffs in all actions consolidated in this MDL.

23           b.     Develop and propose schedules for the commencement, execution,  
24 and completion of all discovery on behalf of all plaintiffs.

25           c.     Cause to be issued in the name of all plaintiffs the necessary discovery  
26 requests, motions, and subpoenas pertaining to any witnesses and  
27 documents needed to properly prepare for the trial of relevant issues  
28 found in the pleadings of this litigation.

1 d. Conduct all discovery in a coordinated and consolidated manner on  
2 behalf and for the benefit of all plaintiffs.

3 2. Hearings and Meetings

4 a. Call meetings of counsel for plaintiffs for any appropriate purpose,  
5 including coordinating responses to questions of other parties or of the  
6 Court. Initiate proposals, suggestions, schedules or joint briefs, and  
7 any other appropriate matters pertaining to pretrial proceedings.

8 b. Examine witnesses and introduce evidence on behalf of plaintiffs at  
9 hearings.

10 c. Act as spokespersons for all plaintiffs at pretrial proceedings and in  
11 response to any inquiries by the Court, subject to the right of any  
12 plaintiff's counsel to present non-repetitive individual or different  
13 positions.

14 3. Miscellaneous

15 a. Submit and argue all verbal and written motions presented to the  
16 Court on behalf of Plaintiff's Leadership Counsel as well as oppose,  
17 when necessary, any motion submitted by defendants or other parties  
18 which involve matters within the sphere of the responsibilities of  
19 Plaintiffs' Leadership Counsel.

20 b. Negotiate and enter into stipulations with defendants regarding this  
21 litigation. All stipulations entered into by Plaintiffs' Leadership  
22 Counsel, except for strictly administrative details, must be submitted  
23 for Court approval and will not be binding until ratified by the Court.  
24 Any MDL plaintiffs' attorney not in agreement with a non-  
25 administrative stipulation shall file with the Court a written objection  
26 within five (5) days after he/she knows or should have reasonably  
27 become of aware of the stipulation. Failure to object within this time  
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- shall be deemed a waiver and the stipulation will be binding on that party.
- c. Explore, develop, and pursue all settlement options pertaining to any claim or portion thereof of any case filed in this litigation.
  - d. Maintain adequate files of all pretrial matters, including establishing and maintaining a document or exhibit depository, in either real or virtual format, and having those documents available, under reasonable terms and conditions for examinations by all MDL plaintiffs or their attorneys.
  - e. Perform any task necessary and proper for Plaintiffs' Leadership Counsel to accomplish its responsibilities as defined by the Court's orders, including organizing subcommittees comprised of plaintiffs' lawyers not on Plaintiffs' Leadership Counsel.
  - f. Work with Lead/Liaison Counsel to coordinate the responsibilities of Plaintiffs' Leadership Counsel meetings, keep minutes or transcripts of these meetings, appear at periodic Court-noticed status conferences, perform other necessary administrative or logistic functions of Plaintiffs' Leadership Counsel, and carry out any duty as ordered by the Court.
  - g. Perform other such functions that may be expressly authorized by further Court Orders.

**D. Reimbursement of Costs Expended.**

Plaintiffs' Leadership Counsel shall be entitled to seek reimbursement for costs expended at the time and in a manner approved by the Court. Reimbursements will be governed by a further case management order to be proposed by Plaintiffs' Leadership Counsel and entered by the Court.

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1 **III. Term of Appointments.**

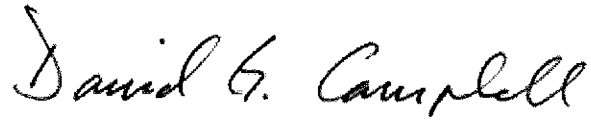
2 Appointments to leadership positions in this order shall last for **one year** from the  
3 date of this order unless terminated earlier by the Court. **Thirty days** before the expiration  
4 of this one-year term, Lead/Liaison Counsel shall file a memorandum notifying the Court  
5 of the need to make further appointments and making recommendations regarding those  
6 appointments.

7 Dated this 19th day of September, 2023.

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David G. Campbell  
Senior United States District Judge

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# **EXHIBIT J**

# MICHAEL A. GALPERN

JAVERBAUM WURGAFT HICKS KAHN WIKSTROM & SININS PC  
1000 HADDONFIELD BERLIN RD SUITE 203 VOORHEES NJ 08043

[mgalpern@lawjw.com](mailto:mgalpern@lawjw.com)

856-596-4100

## **EDUCATION:**

- 1985 BA - Rutgers University, New Brunswick, New Jersey
- 1988 JD - Rutgers Law School, Camden, New Jersey

## **EMPLOYMENT:**

- 1988-1989 - Law Clerk, Honorable Jerome B. Simandle, United States District Court, Camden, New Jersey
- 1989-2018 - Locks Law Firm LLC, Cherry Hill, New Jersey
- 2018- present - Javerbaum Wurgaft Hicks Kahn Wikstrom and Sinins PC
- 1998-2006 - Adjunct Professor of Law, Rutgers School of Law - Camden

## **BAR ADMISSION:**

- 1989 - Pennsylvania
- 1989 - New Jersey

## **CERTIFICATION:**

Civil Trial Attorney (New Jersey Supreme Court; recertified twice)

## **COURT ADMISSION:**

- 1989 - Eastern District, Pennsylvania
- 1989 - Third Circuit Court of Appeals
- 1989 - District Court of New Jersey
- 1989 - New Jersey Supreme Court
- 2017 - Supreme Court of the United States

**NEW JERSEY ASSOCIATION FOR JUSTICE (NJAJ) (f/k/a ATLA-NJ):**

**NATIONAL GOVERNOR**, American Association for Justice, June, 2016 - Present

**PRESIDENT**, New Jersey Association of Justice, June 2010 – June 2011

**PRESIDENT ELECT**, New Jersey Association of Justice, June 2009 to June 2010

**FIRST VICE PRESIDENT**, New Jersey Association of Justice, June 2008 to June 2009

**SECOND VICE PRESIDENT**, New Jersey Association of Justice, June 2007 to June 2008

**THIRD VICE PRESIDENT**, New Jersey Association of Justice, June 2006 to June 2007

**TREASURER**, New Jersey Association of Justice (f/k/a ATLA-NJ), June 2005 to June 2006

**WORKERS INJURY LITIGATION GROUP (WILG):**

**PRESIDENT**, Workers Injury Law and Advocacy Group, October 2014

**PRESIDENT-ELECT**, Workers Injury Law and Advocacy Group, October 2013

**TREASURER**, Workers Injury Law and Advocacy Group , October, 2012

**BOARD OF DIRECTORS**, Workers Injury Litigation Group . 2007- present

**AMERICAN ASSOCIATION FOR JUSTICE (AAJ):**

**BOARD OF GOVERNORS**

**NATIONAL TRIAL LAWYERS ASSOCIATION (NTLA):**

**MEMBER**

**APPOINTMENTS:**

In Re: Bextra and Celebrex Marketing Sales Practices and Product Liability Litigation, Case No: M:05-CV01699-CRB, MDL No. 1699, Appointed by the Honorable Charles R. Breyer, United States District Court. Appointed to Plaintiffs Steering Committee.

In Re: Propecia (FINASTERIDE) Product Liability Litigation, Case No: 12-md-2331 – JG-VVP, Appointed by the Honorable Viktor V. Pohorelsky, United States Magistrate Judge. Appointed to Plaintiffs Steering Committee.

In Re: Yapstone Data Breach, Case No. 4:15-cv-04429-JSW, a data breach case which settled under confidential terms. I and my firm were appointed by the Hon. Jeffrey White, United States District Judge, Northern District of California, to the Plaintiff's Executive Committee

In Re: Experian Data Breach, Case No.: SACV 15-1592 AG (DFMX). I and my firm were appointed by the Hon. Andrew J. Guilford, United States District Judge, Central District of California, to serve on the Plaintiffs Steering Committee.

Caprarola v. Wells Fargo, Superior Court of New Jersey, Law Division: Camden County Cam-L-3570-13, a statewide class action on behalf of loan officers at Wells Fargo. Appointed as Class Counsel.

Jackeline Martinez-Santiago v. Public Storage, Civil No.: 14-302 (JBS/AMD), United States District Court for the District of New Jersey. I and my firm were appointed by the Hon. Jerome B Simandle, Chief United States District Judge for the District of New Jersey as Class Counsel.

Zayas v. Power Windows & Siding & Gutter Power, LLC, Superior Court of New Jersey, Law Division: Camden County CAM-L-5454-09, a statewide class action of NJ Consumers. I was appointed by Hon. Louis R Meloni, J.S.C. Superior Court of New Jersey as Class Counsel.

Kepler v. Weichert, Superior Court of New Jersey, Law Division: Camden County CAM-L-845-10, a statewide class action on behalf of New Jersey consumers. I was appointed by the Hon. Deborah Silverman Katz, J.S.C., Superior Court of New Jersey, as Class Counsel.

Kyle Rivet, et al. v. Office Depot, Case No.: 2:12-02992 (WJM), United State District Court for the District of New Jersey, a multistate Fair Labor Standards Act (FLSA) action. I was appointed by the Hon. William J. Martini as Class Counsel.

Oravsky v. Encompass Insurance Company, Civ. No. 3:10-cv-03168 (PGS)(LHG), United State District Court for the District of New Jersey, a statewide class action on behalf of New Jersey consumers. I was appointed by the Hon. Peter G Sheridan as Class Counsel.

In Re Staples Wage and Hour Litigation, Civ. No. 2:08-cv-5746 (KSH)(PS), United State District Court for the District of New Jersey, a nationwide FLSA litigation, in which I also serve as lead trial counsel during a seven week trial and later served as co-lead negotiating counsel. I was also appointed as Class Counsel by the Hon. Katherine Hayden.

Weber v. Geico, Civ. No. 07-1332 (JBS/JS), United State District Court for the District of New Jersey, a statewide class action on behalf of New Jersey consumers. I was appointed by Hon. Jerome B Simandle, United States District Judge for the District of New Jersey, as Class Counsel.

Kaufman v. New England Fitness South, Superior Court of New Jersey, Law Division: Camden County, Docket No: CAM-L-3935-15, a statewide class action on behalf of New Jersey consumers. I was appointed by the Hon. Thomas T. Booth Jr. J.S.C., as Class Counsel.

Edwards v. 21<sup>ST</sup> Century, Civ. No.: 1:09-cv-04364-JBS-JS, United State District Court for the District of New Jersey, a statewide class action on behalf of New Jersey consumers. I was

appointed by the Hon. Jerome B Simandle, United States District Court for the District of New Jersey as Class Counsel.

In Re: Paragard IUD Products Liability Litigation, United States District Court for the Northern District of Georgia, Atlanta Division, a nationwide product liability litigation on behalf of thousands of women in the country.

Coordinated Proceeding Special Title (Rule 3.550) GILEAD TENOFOVIR CASES, CJC-19-005043, Superior Court for the State of California, County of San Francisco, a nationwide product liability litigation on behalf of thousands of people in the country.

**PANEL MEMBER:**

United States District Court, District of New Jersey, Camden Division, Magistrate Selection Committee. 2008-2009

**APPOINTMENT BY THE NEW JERSEY SUPREME COURT :**

To represent the New Jersey Association for Justice on the Committee on July Selection in Civil and Criminal Trials. 2010- 2012, 2012-2014.

**LEGAL MODERATOR:**

**LAWTALK**, a public interest legal television show sponsored by the Camden County Bar Association. 2005-2008.

**MEMBERSHIPS:**

Board of Governors, New Jersey Association for Justice (formerly ATLA-NJ)  
Association of Trial Lawyers of America  
Member, Key Person Committee - ATLA  
Philadelphia Trial Lawyers Association  
Philadelphia Bar Association  
Camden County Bar Association  
New Jersey State Bar Association

**FOUNDING MEMBER:**

Academy of Catastrophic Injury Attorneys

**EXPERIENCE:**

Tried numerous bench and jury trials. Drafted appellate briefs and argued before New Jersey Superior Court, Appellate Division. Briefed and orally argued Kiss v. Jacob, 138 NJ 278 (1994), a landmark ruling of the New Jersey Supreme Court establishing allocation of damages in multi-defendant cases. Wrote the Amicus brief in Laidlow v. Hariton Machinery, 170 NJ 602 (2002), another landmark ruling of the New Jersey Supreme Court expanding the rights of an injured worker to bring a third party

action against his employer. Handled complex litigation in products liability, toxic torts, class actions, employment discrimination and medical malpractice. Settled what is believed to be the first medical malpractice action against an HMO in the State of New Jersey. Lead trial counsel, and co-lead MDL counsel, in what is believed to be one of the largest FLSA misclassification settlements in New Jersey, In Re Staples. Lead trial counsel, or co-lead counsel, in numerous class actions involving claims for consumer fraud and commercial law.

**INVITED SPEAKER:**

**-CAMDEN COUNTY BAR ASSOCIATION**

*Direct and Cross Examination of a Chiropractor*

**1994**

**-ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY**

*Top Ten in Torts*

**1995**

**-ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY**

*Debunking the MIST Defense*

**1998**

**-ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY**

*Top Ten in Torts*

**April, 2000**

**-ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY**

*Liens for the Civil Practitioner*

**April, 2000**

**-CAMDEN COUNTY BAR ASSOCIATION**

*Hot Topics in Environmental Law & Toxic Torts*

**May, 2000**

**-ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY**

*Impeaching Witness with Style*

**October, 2000**

**- ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY**

*Liens for the Civil Litigator*

**December, 2000**

**- ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY**

*Liens for the Civil Litigator*

**April, 2001**

- **ASSOCIATION OF TRIAL LAWYERS OF AMERICA**  
*HMO Liability*  
**Montreal - July, 2001**
  
- **ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY**  
*Liens for the Civil Litigator*  
**October, 2001**
  
- **ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY**  
*Preparation of the Low-Impact Automobile Case*  
**December, 2001**
  
- ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY**  
*Offensive use of Daubert and Kuhmo Tire*  
**February, 2002**
  
- ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY**  
*Top Ten in Torts*  
**April, 2002**
  
- ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY**  
*Liens for the Civil Litigator*  
**April, 2002**
  
- **ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY**  
*Moderator, Motor Vehicle and Premises Liability Program*  
**Atlanta, GA - July, 2002**
  
- ASSOCIATION OF TRIAL LAWYERS OF AMERICA-NEW JERSEY**  
*Moderator and co-course planner, Direct and Cross-Examination of Expert Witnesses*  
**Edison, NJ - December, 2002**
  
- ASSOCIATION OF TRIAL LAWYERS OF AMERICA-NEW JERSEY**  
*Top Ten in Torts*  
*Liens for the Civil Litigator*  
**Atlantic City, NJ - April, 2003**
  
- ASSOCIATION OF TRIAL LAWYERS OF AMERICA**  
*HMO Liability and ERISA Preemption*  
**San Francisco, CA - July, 2003**
  
- NEW JERSEY INSTITUTE FOR CONTINUING LEGAL EDUCATION**  
*New Jersey Civil Trial Preparation Seminar*  
**Maple Shade, NJ - November, 2003**

- ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY  
*How to Deal with Abuse of Discovery Tactics*  
Edison, NJ - February, 2004
- ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY  
*Moderator, Medical Perspectives on Improving Damages*  
Atlantic City, NJ - April, 2004
- OHIO ACADEMY OF TRIAL LAWYERS= 50<sup>TH</sup> ANNUAL CONVENTION  
*Overview of Employee Retirement Income Security Act of 1974*  
Columbus, OH - May, 2004
- ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY  
*Defense Radiology*  
Jamesburg, NJ - October, 2004
- NEW JERSEY INSTITUTE FOR CONTINUING LEGAL EDUCATION  
*Participation in 3 Panel Member Seminars - Deposing the Expert*  
Maple Shade, NJ - December, 2004
- CAMDEN COUNTY BAR ASSOCIATION  
*Moderator of Law Talk*  
Cherry Hill, NJ - 2004-2005 Season
- ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY  
*Overcoming Juror Bias*  
Jamesburg, NJ – February, 2005
- ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY  
*Program Co-chair, "Personal Injury: Turning Juries On-From Voir Dire to Verdict"*  
Atlantic City, NJ - April, 2005
- ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY  
*Moderator, Ethics Program*  
Atlantic City, NJ - April, 2005
- ASSOCIATION OF TRIAL LAWYERS OF AMERICA  
*Bextra Teleseminar*  
April, 2005
- MEALEYS PUBLICATION  
*Bextra Conference*  
Chicago, IL - May, 2005



- NEW JERSEY INSTITUTE FOR CONTINUING LEGAL EDUCATION  
*Selecting a Winning Jury*  
Cherry Hill, NJ - June, 2005
  
- ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY  
*Exposing Defense Medicine: Orthopedists & Neurologists*  
Long Branch, NJ - June, 2005
  
- NEW JERSEY INSTITUTE FOR CONTINUING LEGAL EDUCATION  
*New Jersey Civil Trial Preparation Seminar*  
Maple Shade, NJ - June, 2005
  
- NEW JERSEY INSTITUTE FOR CONTINUING LEGAL EDUCATION  
*Program Chairman, Mass Tort/Pharmaceutical Seminar*  
Edison, NJ - September, 2005
  
- MASS TORTS MADE PERFECT  
Las Vegas, NV - November, 2005
  
- CAMDEN COUNTY BAR ASSOCIATION  
*Moderator of Law Talk*  
Cherry Hill, NJ - 2005 - 2006 Season
  
- ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY  
*Moderator, Premises Liability*  
February, 2006
  
- ASSOCIATION OF TRIAL LAWYERS OF AMERICA - Teleconference  
*Update on Bextra Science and Literature*  
March, 2006
  
- ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY  
*Moderator, Ethics*  
April, 2006
  
- ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY  
*Top Ten in Torts*  
April, 2006
  
- ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY  
*Voir Dire in Medical Malpractice*  
April, 2006
  
- HARRIS MARTIN PUBLISHING COMPANY  
*Moderator, Medical Malpractice Seminar*  
Philadelphia, PA - May, 2006

**-ASSOCIATION OF TRIAL LAWYERS OF AMERICA- NEW JERSEY**  
*Pharmaceutical Litigation: A Manufacturer=s Duty to Warn*  
**Edison, NJ - October, 2006**

**-AMERICAN ASSOCIATION OF JUSTICE ( f/k/a ASSOCIATION OF TRIAL LAWYERS OF AMERICA)**  
*MDL Update on Bextra/Celebrex*  
**Miami, FL - February, 2007**

**-ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY**  
*Moderator: Ethics 2007 Boardwalk Seminar*  
**Atlantic City, NJ - April, 2007**

**-ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY**  
*Medical Malpractice: Selecting the Right Expert*  
**Atlantic City, NJ - April, 2007**

**-ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY**  
*Top Ten in Torts*  
**Atlantic City, NJ - April, 2007**

**-ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY**  
*Exposing Defense Medicine*  
**May, 2007**

**-AMERICAN ASSOCIATION OF JUSTICE**  
*Vioxx/Bextra/Celebrex- What=s new in New Jersey*  
**Chicago, IL. - July, 2007**

**-ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY**  
*Moderator, Mass Torts Program,*  
**October, 2007**

**-AMERICAN ASSOCIATION OF JUSTICE**  
*The Small Firm's Guide to Fighting the Drug Giants*  
**November, 2007**

**-OHIO ACADEMY OF TRIAL LAWYERS**  
*Pharmaceutical Litigation for the Small Business Practitioner*  
**December, 2007**

**-AMERICAN ASSOCIATION OF JUSTICE**  
*VIOXX/Bextra/Celebrex – What's New In New Jersey*  
**Puerto Rico - January, 2008**

- ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY  
*Moderator Ethics*  
**May, 2008**
  
- ASSOCIATION OF TRIAL LAWYERS OF AMERICA - NEW JERSEY  
*Top Ten In Torts*  
**May, 2008**
  
- AMERICAN ASSOCIATION OF JUSTICE  
*2008 Annual Convention*  
**Philadelphia, PA – July, 2008**
  
- NEW JERSEY ASSOCIATION FOR JUSTICE (f/k/a ASSOCIATION OF TRIAL  
LAWYERS OF AMERICA - NEW JERSEY)  
*Use of Expanded Voir Dire Procedures to Expose Juror Bias*  
**Edison, NJ – February, 2009**
  
- NEW JERSEY ASSOCIATION FOR JUSTICE  
*Ten Practice Tips About Appellate Practices*  
**Atlantic City, NJ – April, 2009**
  
- NEW JERSEY ASSOCIATION FOR JUSTICE  
*Ethics Program Co-Chair*  
**Atlantic City, NJ – April, 2009**
  
- NEW JERSEY ASSOCIATION FOR JUSTICE  
*State & Federal E-Filing*  
**Atlantic City, NJ – April, 2009**
  
- NEW JERSEY ASSOCIATION FOR JUSTICE  
*The Year in Torts in New Jersey/The Top Ten Moderator*  
**Atlantic City, NJ – April, 2009**
  
- AMERICAN ASSOCIATION OF JUSTICE  
*Intentional Torts Against the Employer*  
**San Francisco, CA – July, 2009**
  
- WORKERS' INJURY LAW & ADVOCACY GROUP  
*Third Party Recoveries for Injured Workers*  
**Carefree, AZ – October, 2009**
  
- NEW JERSEY ASSOCIATION FOR JUSTICE  
*Ethics*  
**Atlantic City, NJ – April, 2010**

- NEW JERSEY ASSOCIATION FOR JUSTICE  
*Mass Torts 2010*  
**Atlantic City , NJ – April 2010**
  
- NEW JERSEY ASSOCIATION FOR JUSTICE  
*What to do when a plaintiff or defendant files for bankruptcy*  
**Atlantic City, NJ – April, 2010**
  
- NEW JERSEY ASSOCIATION FOR JUSTICE  
*Federal Court: Thriving & Surviving*  
**Meadowlands, NJ - November, 2010**
  
- WORKERS' INJURY LAW & ADVOCACY GROUP  
*Calling the Defendant in your FLSA CASE*  
**Cleveland, OH – March, 2011**
  
- NEW JERSEY ASSOCIATION FOR JUSTICE  
*Mass Torts 2011*  
**Atlantic City, NJ – April, 2011**
  
- NEW JERSEY STATE BAR ASSOCIATION  
*Trial Practice: Uniform Discovery & Credible Trial Dates*  
**Atlantic City, NJ – May, 2011**
  
- NEW SOCIETY OF INTERVENTIONAL PAIN PHYSICIANS  
*The Legal Impediments to Obtaining Medical Treatment for MVA Victims*  
**Edison, NJ – June, 2011**
  
- NEW JERSEY ASSOCIATION FOR JUSTICE  
*Understanding PIP Arbitration: Is the PIP System Under Attack?*  
**Meadowlands, NJ - November 2011**
  
- NEW JERSEY ASSOCIATION FOR JUSTICE  
*Co-chair Mass Torts Program*  
**Atlantic City, NJ – April 2012**
  
- WORKERS' INJURY LAW & ADVOCACY GROUP  
*Concussions in Professional Sports*  
**Columbus, OH – May, 2012**
  
- OHIO ACADEMY OF JUSTICE –  
*Concussion Testing in young football players*  
**Columbus, OH – May, 2012**

- **OHIO ACADEMY OF JUSTICE**  
*Deposing the Corporate Witness and other 30(b)(6) Tips*  
**Cleveland, OH – June 12, 2012**
  
- WORKERS' INJURY LAW & ADVOCACY GROUP**  
*Moderator, Wage & Hour Seminar*  
**Las Vegas, Nevada – October, 2012**
  
- NEW JERSEY ASSOCIATION FOR JUSTICE**  
**Four Concurrent Seminars with Exhibits**  
*Seminar: Trial Evidence for the Personal Injury Attorney 2013*  
**Edison, New Jersey – February, 2013**
  
- OHIO ASSOCIATION FOR JUSTICE**  
*Moderator, Advance Wage & Hour Seminar*  
**Steamboat Springs, CO – March, 2013**
  
- NEW JERSEY ASSOCIATION FOR JUSTICE**  
*Co-chair Mass Torts Program*  
**Atlantic City, NJ – April, 2014**
  
- NEW JERSEY ASSOCIATION FOR JUSTICE**  
*Mass Torts 101*  
**Meadowlands, NJ – November, 2014**
  
- CAPE MAY COUNTY BAR ASSOCIATION**  
*Civil Actions / Class Action Lawsuits CLE Seminar*  
**Seaville, NJ – January 28, 2015**
  
- HARRIS MARTIN PHILLY MASS TORT CONFERENCE**  
*Tinchner Ruling and The Effects of the Change on Mass Tort-Asbestos*  
**Philadelphia, PA – March 27, 2015**
  
- NEW JERSEY ASSOCIATION FOR JUSTICE**  
*Co-chair Mass Torts Program*  
**Atlantic City, NJ – April 2015**
  
- NEW JERSEY ASSOCIATION FOR JUSTICE**  
*Co-chair Mass Torts Program*  
**Atlantic City, NJ – April 2016**
  
- NEW JERSEY ASSOCIATION FOR JUSTICE**  
*Co-chair Mass Torts Program*  
**Atlantic City, NJ – April 2017**

**-NEW JERSEY ASSOCIATION FOR JUSTICE**

*All About Liens*

**Somerset, NJ – March 1, 2018**

**-FLORIDA JUSTICE ASSOCIATION**

*Concussion and Other TBI Cases; Drawing a Line in the Sand as to When to Decline an Offer and Try the Case”*

**Orlando, FL – March 23, 2018**

**--NEW JERSEY ASSOCIATION FOR JUSTICE**

*Co-chair Mass Torts Program*

**Atlantic City, NJ – May 2018**

**--NEW JERSEY ASSOCIATION FOR JUSTICE**

*Co-chair Mass Torts Program*

**Atlantic City, NJ – May 2019**

**--NEW JERSEY ASSOCIATION FOR JUSTICE**

*Moderator Mass Torts Program*

*Presentation - Paraquat*

**A Digital Experience – June 2021**

**--NEW JERSEY ASSOCIATION FOR JUSTICE**

*Moderator Mass Torts Program*

**Atlantic City, NJ – June 2022**

**--NEW JERSEY ASSOCIATION FOR JUSTICE**

*Moderator Mass Torts Program*

**Atlantic City, NJ – June 2023**

**--CAMDEN COUNTY BAR ASSOCIATION**

*Injustice For All: Exposing Racial and Economic Disparities in Medicine and the Workplace*

*Presented with Drake Bearden, Esquire*

**Cherry Hill, NJ - April 2023**

**INVITED SPEAKING ENGAGEMENTS**

**-WORKERS' INJURY LAW AND ADVOCACY GROUP**

**Honolulu, Hawaii - October 2023**

**--NEW JERSEY ASSOCIATION FOR JUSTICE**

*Presentation: Arbitration – Thrive, Don't Just Survive*

**Meadowlands, NJ – November 2023**

**-Professional Day Seminar – Judiciary in Camden County**

*Presentation: Professional Persuasion – How Being Professional Can Be a Strategic Advantage!*

**Camden, NJ – November 2023**

**PUBLICATIONS:**

New Jersey Institute For Continuing Legal Education, 2003; 2009 - N.J. Trial and Evidence Book,  
Chapter: To Speak the Truth; The Status of Voir Dire In New Jersey: Where Do We Go From Here?

**AWARDS:**

Digital Press International Award for Top Ten Leaders of Southern and Central New Jersey In  
Personal Injury and Trial Practice, 2003.

- New Jersey Monthly Award - New Jersey Super Lawyer, 2005
- New Jersey Monthly Award - New Jersey Super Lawyer, 2006
- New Jersey Monthly Award - New Jersey Super Lawyer, 2007
- New Jersey Monthly Award - New Jersey Super Lawyer, 2008
- New Jersey Monthly Award - New Jersey Super Lawyer, 2009
- New Jersey Monthly Award – New Jersey Super Lawyer, 2010
- New Jersey Monthly Award – New Jersey Super Lawyer, 2011
- New Jersey Monthly Award – New Jersey Super Lawyer, 2012
- National Trial Lawyers Membership- Top 100 Trial Lawyers, 2012
- New Jersey Monthly Award – New Jersey Super Lawyer, 2013
- New Jersey Monthly Award – New Jersey Super Lawyer, 2014
- New Jersey Monthly Award – New Jersey Super Lawyer, 2015
- New Jersey Monthly Award – New Jersey Super Lawyer, 2016
- New Jersey Monthly Award – New Jersey Super Lawyer, 2017
- New Jersey Monthly Award – New Jersey Super Lawyer, 2018
- New Jersey Monthly Award – New Jersey Super Lawyer, 2019
- New Jersey Monthly Award – New Jersey Super Lawyer, 2020
- New Jersey Monthly Award – New Jersey Super Lawyer, 2021
- New Jersey Monthly Award – New Jersey Super Lawyer, 2022
- New Jersey Monthly Award – New Jersey Super Lawyer, 2023

# **EXHIBIT K**



**JENNIFER P. ELWELL**  
Berger Montague PC  
1818 Market Street, Suite 3600  
Philadelphia, PA 19103  
jelwell@bm.net/215-875-3029

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## **LEGAL EXPERIENCE**

### **Berger Montague PC, Philadelphia, PA**

*Senior Counsel* (Consumer Protection Department, Mass Tort Group), 2020-present

*In re: The Glen Mills Schools Litigation*, Mass Tort Program, Docket No. 900 before Hon. Fletman (Phila. Ct. Common Pleas): Represent survivors of physical, sexual and emotional abuse with claims against an institution that received juvenile-court adjudicated teenage boys. Conducted extensive client interviews and evaluated hundreds of allegations of abuse. Involved in every facet of the case in collaboration with co-liaison counsel, including drafting the master complaint, crafting case management orders and plaintiff and defendant fact sheets, completing plaintiff discovery obligations for over 120 clients, managing review of over one million defendant documents, preparing for and participating in 30(b)6 and plaintiff depositions, preparing for and participating in mediation, and most recently, selecting bellwether candidates and preparing for trials.

*In re: Allegan Biocell Textured Breast Implant Products Liability Litigation* (MDL 2921) before Hon. Martinotti (D.N.J.): Managed the completion of discovery obligations for over 130 MDL clients, including service of Plaintiff Fact Sheets and corresponding document productions within a Court-ordered deadline. Oversee various other discovery and bellwether evaluation efforts for clients filed in the MDL, and related MCL, JCCP and class actions.

*In re: Philips Recalled CPAP, Bi-Level Pap, and Mechanical Ventilator Products Liability Litigation* (MDL 3014) before Hon. Conti (W.D. Pa.): Managed a team to complete case evaluations and census registry obligations for over 2500 clients. Oversee various other discovery and bellwether evaluation efforts, including the filing of short-form complaints, service of Plaintiff Fact Sheets and related document productions for over 50 plaintiffs.

*Confidential Settlement/Workplace Discrimination*: Represented 17 employees with workplace discrimination claims against an international corporation that resulted in a confidential settlement. Conducted an in-depth investigation into client allegations, including interviews and assessment of supporting documents, corporate organization, policies, and culture. Prepared comprehensive claims summaries on issues that included discriminatory hiring and termination, compensation, promotion, retaliation and hostile work environments. Guided clients through a mediation process involving severance and global settlement agreements, coordinating with the mediator and defense counsel for allocation and distribution of funds.

### **Kessler Topaz Meltzer & Check LLP, Radnor, PA**

*Senior Staff Attorney* (Consumer Protection Department), 2013-2017

Represented consumers and employees throughout multiple phases of nationwide class actions where the firm was appointed lead or co-lead counsel, including claims challenging predatory lending practices, consumer fraud, unfair and deceptive business practices, antitrust violations and wage and hour violations. Conduct extensive legal research, and analysis. Draft discovery motions, pretrial motions; dispositive and class certification motions; and discovery requests. Interview plaintiffs and prepare corresponding discovery responses. Assess deposition testimony and other discovery material for class certification briefing. Participate in trial preparation.

**Heckscher Teillon Terrill & Sager PC**, West Conshohocken, PA

*Associate Attorney*, 2006-2008

Represented beneficiaries and fiduciaries in estate, trust and fiduciary matters, including preparation of guardianship petitions and participation in related proceedings, fiduciary litigation, and special needs planning.

**Dechert LLP**, Philadelphia, PA

*Senior Staff Attorney* (Products Liability Department), 2006

Managed plaintiff fact investigations for multidistrict pharmaceutical litigation at an international defense law firm.

**Pepper Hamilton LLP**, Philadelphia, PA

*Associate Attorney* (Health Effects Litigation Department), 2001- 2004; *Summer Associate*, 2000

Supervised team of fifteen attorneys for response to U.S. Justice Department subpoenas related to audits of pharmaceutical companies at a national defense law firm. Conduct audit of pharmaceutical company to ensure compliance with federal regulations and identify potential corporate witnesses.

**Chadbourne & Park LLP**, New York, NY

*Paralegal*, (Products Liability Department – Tobacco Litigation), 1994-1998

**EDUCATION**

**Temple University Beasley School of Law**, Philadelphia, PA, Juris Doctorate, 2001

Member, *Temple Law Review*; Outstanding Oral Advocacy Award Recipient

**Villanova University**, Villanova, PA, Bachelor of Arts, English and Sociology, Dual Major, 1992

**ADMISSIONS**

Pennsylvania, U.S. District Court for the Eastern District of Pennsylvania

New Jersey, U.S. District Court for the District of New Jersey

**AFFILIATIONS**

American Association for Justice

Philadelphia Trial Lawyers Association

The National Trial Lawyers Top 100