

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

**IN RE: KUGEL MESH HERNIA
REPAIR PATCH LITIGATION**

THIS DOCUMENT RELATES TO:

Plaintiffs who are represented by:

Potts Law Firm, LLP;
Williams Kherkher Hart Boundas, L.L.P.,
Goza & Honnold, L.L.C.,
Wagstaff & Cartmell, LLP
Law Offices of Charles H. Johnson, P.A.

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MDL Docket No. 07-1842-ML

Chief Judge Mary M. Lisi

Oral Argument Requested

**CERTAIN PLAINTIFFS' AND DEFENDANTS' JOINT MOTION FOR APPOINTMENT
OF SPECIAL MASTER, PATRICK A. JUNEAU, ESQ., PURSUANT TO RULE 53**

Plaintiffs, as represented either by the Potts Law Firm, LLP; Williams Kherkher Hart Boundas, L.L.P., Goza & Honnold, L.L.C., Wagstaff & Cartmell, LLP, or the Law Offices of Charles H. Johnson, P.A. (“Plaintiffs”) along with C. R. Bard, Inc. and Davol, Inc. (“Defendants”) hereby jointly and respectfully move this Court, for the reasons specified in the attached Memorandum of Law, to appoint Patrick A. Juneau as Special Master , pursuant to Federal Rule of Civil Procedure 53.

WHEREFORE, Plaintiffs and Defendants jointly respectfully request that this Court grant this motion and appoint Patrick A. Juneau as Special Master.

Dated: July 20, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of July, 2011, a true copy of the foregoing sent to the following via electronic mail and/or first class postage prepaid U.S. Mail:

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**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

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| THIS DOCUMENT RELATES TO: | | Chief Judge Mary M. Lisi |
| Plaintiffs who are represented by: | | Oral Argument Requested |
| Potts Law Firm, LLP; Williams Kherkher Hart Boundas, L.L.P., Goza & Honnold, L.L.C., Wagstaff & Cartmell, LLP Law Offices of Charles H. Johnson, P.A. | | |

**MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION TO APPOINT
PATRICK A. JUNEAU, ESQ., AS SPECIAL MASTER**

Plaintiffs, as represented either by the Potts Law Firm, LLP; Williams Kherkher Hart Boundas, L.L.P., Goza & Honnold, L.L.C., Wagstaff & Cartmell, LLP, or the Law Offices of Charles H. Johnson, P.A. (“Plaintiffs”) along with C. R. Bard, Inc. and Davol, Inc. (“Defendants”) hereby jointly and respectfully submit this Memorandum of Law in support of their joint motion to appoint Patrick A. Juneau as Special Master, pursuant to Federal Rule of Civil Procedure 53.

I. INTRODUCTION

Certain plaintiffs, as represented by either the Potts Law Firm, LLP, Williams Kherkher Hart Boundas, L.L.P., Goza & Honnold, L.L.C., Wagstaff & Cartmell, LLP (hereinafter “the Potts firms” or “Potts cases”) or the Law Offices of Charles H. Johnson, P.A., (hereinafter “the Johnson firm” or “Johnson cases”) together with Defendants, C. R. Bard, Inc. (“C. R. Bard”) and Davol Inc. (“Davol”), jointly and respectfully move this Court to appoint Patrick A. Juneau, Esq., as the Special Master, pursuant to Federal Rule of Civil Procedure 53, to administer,

implement, oversee, assign, and facilitate the claims resolution process for the individual settlements that have been reached between and among the parties in this litigation.

Beginning in 2006, the Potts firms and the Johnson firm, as well as other law firms, began filing numerous cases against C. R. Bard and Davol alleging, *inter alia*, that the Composix® Kugel® Hernia Patch(es) were defectively manufactured, designed and/or distributed by Davol.

In the interests of efficiency and consistency, the Judicial Panel on Multidistrict Litigation (“J.P.M.L.”) issued an order transferring many cases including those filed by the Potts firms and Johnson firm, to the United States District Court for the District of Rhode Island for coordinated and/or consolidated pre-trial proceedings. *In Re Kugel ® Mesh Hernia Patch Products Liability Litigation*, MDL No. 1842 (J.P.M.L. June 22, 2007). In creating this MDL, the J.P.M.L. determined that “all actions involve common questions of fact, and that centralization under Section 1407 in the District of Rhode Island will serve the convenience of the parties and witnesses and promote the just and efficient conduct of this litigation.” *Id* at 2.

Since the inception of this litigation, the Potts firms have filed approximately 495 cases and the Johnson firm filed approximately 522 cases. Recently, both sets of firms have reached and executed settlement agreements with C. R. Bard and Davol. Indeed, notwithstanding the tremendous progress and strides the parties have undertaken to advance this litigation, centralization continues to be “necessary to . . . conserve the resources of the parties, their counsel and the judiciary.” *Id*.

Based on the terms of the settlement agreements and the need to address the individual circumstances of over 1,000 cases pending before this Court, the Potts firms and Johnson firm as well as C. R. Bard and Davol have jointly agreed to request the appointment of Patrick A. Juneau, Esq. as Special Master to this Court to administer the resolution of these claims.

II. THE APPOINTMENT OF PATRICK A. JUNEAU AS SPECIAL MASTER IS NECESSARY, PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 53

The appointment of Mr. Juneau as Special Master, pursuant to Rule 53, is warranted here because Mr. Juneau will be “perform[ing] duties consented to by the parties” and he will be “address[ing] pre-trial and post-trial matters that cannot be addressed effectively and timely by an available district judge or magistrate judge of the district.” See Rule 53(a)(1)(A) and (C).¹ The parties herein consent to having a Special Master: (i) administer, implement, oversee, assign, and facilitate the terms of the settlement, including, but not limited to, the claims resolution among the parties; and (ii) perform any and all other settlement-related duties assigned to him by the Court (as well as any ancillary acts required to fully carry out those duties) as permitted by both the Federal Rules of Civil Procedure and Article III of the Constitution.

Mr. Juneau has served as a court-appointed Special Master in numerous federal and state cases, including product liability class actions and mass and toxic tort litigation including, among others, *In Re: Combustion, Inc.*, MDL No. 979 (M.D. La.), which was a toxic tort litigation involving 10,800 claimants alleging personal injury from a superfund site; *In Re: Silicone Gel Breast Implant Products Liability Litigation* (Louisiana Breast Implant Litigation), which was a medical device litigation involving over 3,300 claimants; *In Re: Propulsid Product Liability Litigation*, MDL No. 1355 (E.D. La.), which was a prescription drug product liability litigation involving thousands of claimants throughout the United States; *In Re: Guidant Corp. Implantable Defibrillators Product Liability Litigation*, MDL No. 1708 (D. Minn.), which was a nationwide medical device product liability action involving over 8,500 claimants; *Darcy*

¹ Special masters have been appointed in a significant number of Multidistrict Litigation (“MDL”) cases. See, e.g., *In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Products Liability Litigation*, MDL No. 1203, 1999 WL 782560 at *2 (E.D. Pa. Sept. 27, 1999) (special master was enlisted to help resolve discovery disputes between hundreds of plaintiffs and dozens of defendants); *In re: Consolidated Litigation Concerning International Harvester’s Disposition of Wisconsin Steel*, 1987 WL 16225 (N.D. Ill. Aug. 21, 1987) (special master appointed to resolve disputes over whether 265 documents or portions of documents were privileged); and *In re Bridgestone/Firestone, Inc. ATX, ATX II, and Wilderness Tires Products Liability Litigation*, MDL No. 1373, www.insd.uscourts.gov/Firestone/Orders/sm1_en1.pdf (special master appointed to assist with legal analysis of the parties’ motions). This case is no less complicated than any of the aforementioned.

Guidry, et al vs. American Public Life Ins. Co., et al, (Calcasieu Parish, Louisiana), which was an insurance premium litigation involving over 3,002 claimants; and *In Re: Vioxx Products Liability Litigation*, MDL No. 1657 (E.D. La.), which was a nationwide drug product liability action involving over 80,000 claims.

He has been intimately involved in the successful resolution of these and other mass tort cases. Mr. Juneau is also a charter member of the Academy of Court Appointed Masters. Mr. Juneau's *Curriculum Vitae* is attached to his Declaration as Exhibit A.

As Special Master, Mr. Juneau will be an important part of these settlement programs because he brings broad and deep legal experience to this litigation, particularly in the field of mass and complex product liability matters. He will provide review and oversight to ensure that the program is administered fairly and properly, pursuant to the terms the parties have agreed upon.

Overall, the settlement of the cases brought by the Potts firms and Johnson firms involving Kugel Mesh Hernia Patch Products that are subject to this MDL will be run more effectively and efficiently because of Mr. Juneau's participation. Mr. Juneau will be responsible to ensure that each plaintiff's claim is fairly considered on an individual basis. More specifically, the parties have agreed that Mr. Juneau shall: (i) review the Claims of the Claimants and Plaintiffs; (ii) review and assess the submissions from Claimants' and Plaintiffs' Counsel and Defendants regarding categorization of Claimants and Plaintiffs; (iii) assign all of the Claimants and Plaintiffs into one of these six mutually exclusive categories; (iv) determine the individual relief amount for each and all Claimants and Plaintiffs; and (v) notify the Claimants' and Plaintiffs' Counsel and Defendants of those individual relief amounts prior to notification of relief to Claimants and Plaintiffs.

In accordance with Rule 53(h), the parties agree to compensate the Special Master for carrying out the aforementioned tasks at a flat rate of \$50,000 for the Potts cases and a flat rate of \$50,000 for the Johnson cases. Said flat fee will be inclusive of all of Special Masters' costs and

fees and will be paid out of the overall settlement amounts to be paid on the Potts cases and the Johnson cases.

III. CONCLUSION

The undersigned parties fully consent to the appointment of Special Master Juneau to administer the settlement of their claims in the *In Re Kugel* ® *Mesh Hernia Patch Products Liability Litigation*, MDL No. 1842 and submit herewith a proposed order. For the reasons set forth above, the parties respectfully request that the Court refer these cases to Special Master Juneau for settlement purposes.

DATED: July 20, 2011

Respectfully submitted,

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