

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

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

MDL No. 2187

THIS DOCUMENT RELATES TO ALL CASES

**PRETRIAL ORDER # 166
(ORDER APPOINTING ELLEN REISMAN
AS SPECIAL MASTER)**

MDL 2187, *In re: C. R. Bard, Inc. Pelvic Repair System Products Liability Litigation*, was commenced by the docketing in this district of a transfer order under 28 U.S.C. § 1407 on October 12, 2010 by the Judicial Panel on Multidistrict Litigation covering 36 civil actions and three potential tag-along actions that were pending in federal district courts. [Docket 1]. The litigation involves allegations of defects in and related to pelvic repair systems manufactured by C. R. Bard, Inc. (“Bard”) for treatment of pelvic organ prolapse and stress urinary incontinence. Since that first transfer of cases to this district there have been thousands of additional cases transferred and directly filed here, and it is anticipated that additional numbers of cases will be transferred to this district through the process or directly filed here.

Since the creation of this MDL 2187, as well as the MDLs 2325, 2326, 2327, 2387, 2440 and 2511, this Court has moved and will continue to move the litigation forward in a fair and efficient manner. At the same time, this Court, cognizant of the important public policy of

encouraging settlement among litigating parties, has recommended all parties consider engaging in settlement discussions to determine if an amicable resolution of these cases is possible. The settlements announced by plaintiffs and another manufacturer demonstrate that settlement of these cases is possible.

On February 5, 2015, I conducted a status conference with plaintiffs' counsel and all defendant client representative(s) and in house counsel with full authority to make all decisions in each MDL, settlement counsel and lead counsel for each of the defendants for MDLs 2187, 2325, 2326, 2327, 2387, and 2440. Also on February 5, 2015, with the permission of plaintiffs' leadership, I conducted a private conference with all defendant client representative(s) and in house counsel with full authority to make all decisions in each MDL, settlement counsel and lead counsel for defendants. On February 5 and 6, 2015, this Court facilitated breakout sessions in the above-referenced MDLs with plaintiffs' co-leadership for each MDL, defendant client representative(s) and in house counsel with full authority to make all decisions related to their respective MDLs, settlement counsel and lead counsel for defendants. During these conferences and sessions, this Court again recommended that the parties engage in good-faith settlement negotiations to explore the resolution of their cases.

Given the status of this litigation, this Court has determined that it is in the best interests of all parties and the overall administration of MDL 2187 to appoint a Special Master to facilitate settlement discussions between plaintiffs' leadership and Bard. During the February 6, 2015 breakout session and subsequently, I consulted with company representatives of Bard with full authority to make decisions regarding MDL 2187, and plaintiffs' leadership, including the Co-Coordinating Co-Lead Counsel for Plaintiffs, regarding whom to appoint as Special Master, and the parties have been given the opportunity to be heard and suggest candidates for appointment.

It is the judgment of this Court that Ellen Reisman is the person most qualified for this appointment. (*See* Exhibit A (Affidavit of Ellen K. Reisman, Esquire)). This Court has notified Bard and the plaintiffs' leadership, including the Co-Coordinating Co-Lead Counsel for Plaintiffs, and provided an opportunity for the parties to be heard. It is the opinion of all parties involved that Ms. Reisman possesses the requisite skills, experience, temperament, knowledge, credibility, and other attributes necessary to serve as Special Master and facilitate productive settlement discussions in this litigation. Ms. Reisman is known to this Court, the legal community, the plaintiffs' bar, and corporate America as an active, successful, and highly regarded lawyer who has been able to achieve resolution for some of the largest and most complex mass torts over the past three decades.

Ms. Reisman currently serves as national settlement counsel for American Medical Systems, Inc. ("AMS") and Endo Pharmaceuticals, Inc. ("Endo") in MDL 2325, which has entered into settlement agreements that are expected to resolve substantially all of AMS's pelvic repair system products cases. This fact is well known to plaintiffs' leadership, including Co-Coordinating Co-Lead Counsel for Plaintiffs, as well as Bard, and was again made known to all sides during the all MDL status conference and private conference on February 5, 2015, as well as the breakout session on February 6, 2015 and in subsequent discussions with all parties. To the extent that a potential conflict could be asserted between her continuing role as national settlement counsel for Endo and AMS and her role as Special Master, all applicable parties, including Endo, on behalf of itself and AMS, have agreed to waive such a potential conflict as to Ms. Reisman, as well as any other attorneys and staff who represent Endo and AMS as settlement counsel. The parties have notified this Court that they consent to the appointment of Ellen Reisman as Special Master, which this Court approves.

The Court, pursuant to its inherent authority and its authority under Federal Rule of Civil Procedure 53, hereby issues the following Order.

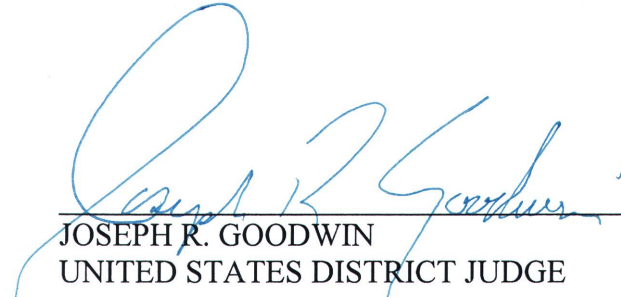
IT IS HEREBY ORDERED THAT:

1. Ellen K. Reisman, Esquire, Arnold & Porter, LLP, 777 South Figueroa Street, 44th Floor, Los Angeles, CA 90017 is hereby appointed as the Special Master to facilitate settlement discussions between plaintiffs' counsel and Bard related to the implantation of Bard's pelvic repair system products.
2. The Special Master shall proceed with all reasonable diligence.
3. In order to facilitate settlement discussions, the Special Master may have confidential *ex parte* communications with plaintiffs' counsel, client representative(s) and in house counsel with full authority to make all decisions in MDL 2187, settlement counsel, and lead counsel for Bard, and the Court in relation to her role as Special Master, and such *ex parte* communications shall not be deemed to have waived any attorney-client privileges.
4. To execute the responsibilities and duties of her office, the Special Master shall be vested with the powers described and contemplated under Federal Rule of Civil Procedure 53(c)(1)(b) and 53(e), including the right to:
 - a. Review and analyze all papers, affidavits, and legal memoranda filed with this Court and any other court of competent jurisdiction that bear upon the parties' settlement positions;
 - b. Schedule, convene, preside over, and otherwise conduct any meetings, hearings, conferences, disposition or proceedings deemed necessary to facilitate good-faith settlement discussions between plaintiffs' counsel and Bard;

- c. Incur necessary expenses and costs at reasonable levels to permit her to function fully in pursuance of the tasks covered by this reference. This power shall include the authority to incur expenses and costs needed to engage the services of necessary personnel, including but not limited to the professional services of other attorneys who represent Endo and AMS as settlement counsel, and to acquire office space, supplies, and customary services associated therewith.
5. The Special Master shall periodically report to the Court, in the time and manner requested, regarding the status of settlement discussions between plaintiffs' counsel and Bard. To the extent any such reports are requested to be in writing, unless otherwise ordered by this Court, such reports shall be filed under seal and served only on this Court.
6. On a monthly basis, the Special Master shall submit to this Court, and file under seal, an application for counsel fees and costs associated with her service as Special Master and, in that respect, is authorized to incur only such fees and costs as may be reasonably necessary to fulfill her duties under this order, or such other orders as this Court may issue from time to time hereafter. Upon receipt of such application, and to the extent that such application is approved, this Court will allocate fees and costs evenly between the parties.
7. Unless expressly authorized by Endo, the Special Master shall not disclose any confidential information or documents obtained or created in her role as national settlement counsel for AMS.
8. The Special Master, plaintiffs' counsel, and Bard shall refrain from publicly discussing the settlement process or disclosing any discussions they may have as part of that process, without further order of the Court.

The court DIRECTS the Clerk to file a copy of this order in 2:11-md-02187 and it shall apply to each member related case previously transferred to, removed to, or filed in this district, which includes counsel in all member cases up to and including civil action number 2:15-cv-01699. In cases subsequently filed in this district, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each new action at the time of filing of the complaint. In cases subsequently removed or transferred to this court, a copy of the most recent pretrial order will be provided by the clerk to counsel appearing in each new action upon removal or transfer. It shall be the responsibility of the parties to review and abide by all pretrial orders previously entered by the court. The orders may be accessed through the CM/ECF system or the court's website at www.wvsd.uscourts.gov.

ENTER: February 12, 2015



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE