

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

WANDA QUEEN and GREG QUEEN)	
)	
Plaintiffs,)	
)	CIVIL ACTION FILE
v.)	
)	NO. _____
C. R. BARD, INC.,)	
)	
Defendant.)	
_____)	

COMPLAINT

COME NOW Wanda and Greg Queen as Plaintiffs herein and hereby file this Complaint, showing the Court as follows:

PARTIES, JURISDICTION AND VENUE

1.

Plaintiffs are citizens of the State of North Carolina.

2.

Defendant C. R. Bard, Inc. ("Defendant") is a New Jersey corporation with its principal place of business in New Jersey. All acts and omissions of Defendant as described herein were done by its agents, servants, employees and/or owners, acting in the course and scope of their respective agencies, services, employments and/or ownership.

3.

Plaintiffs are seeking damages in excess of \$75,000.00.

Subject matter jurisdiction is proper pursuant to 28 U.S.C. § 1332.

4.

Bard Urological, the division of Defendant C. R. Bard, Inc. that designed, manufactured, marketed, packaged, labeled and sold the product at issue in this lawsuit, is located in the Northern District of Georgia in Covington, Georgia.

5.

Defendant has significant contacts with the Northern District of Georgia such that it is subject to personal jurisdiction within said district.

6.

A substantial part of the events and omissions giving rise to Plaintiffs' causes of action occurred in the Northern District of Georgia.

7.

Pursuant to 28 U.S.C. § 1391(a), venue is proper in the Northern District of Georgia.

FACTUAL BACKGROUND

8.

Plaintiff Wanda Queen was implanted with the Avaulta Solo Anterior Synthetic Support System (the "Product") during surgery performed by Dr. Elizabeth Barbee at Wake Medical Center in Raleigh, North Carolina.

9.

The Product was implanted in Plaintiff Wanda Queen to treat her pelvic organ prolapse, the use for which the Product was designed, marketed and sold.

10.

As a result of having the Product implanted in her, Plaintiff Wanda Queen has experienced significant mental and physical pain and suffering, has sustained permanent injury, and permanent and substantial physical deformity, has undergone or will undergo corrective surgery or surgeries, and has endured impaired physical relations with her husband, Plaintiff Greg Queen.

11.

Defendant designed, manufactured, marketed, packaged, labeled, and sold the Avaulta Solo Anterior Synthetic Support System, including the Product that was implanted in Plaintiff Wanda Queen.

CAUSES OF ACTION

COUNT I: NEGLIGENCE

12.

Plaintiffs incorporate by reference paragraphs 1-11 of the Complaint as if fully set forth herein.

13.

Defendant had a duty to individuals, including Plaintiff

Wanda Queen, to use reasonable care in designing, manufacturing, marketing, labeling, packaging and selling the Product.

14.

Defendant was negligent in failing to use reasonable care in designing, manufacturing, marketing, labeling, packaging and selling the Product.

15.

As a direct and proximate result of Defendant's negligence, the Plaintiff Wanda Queen was caused and/or in the future will be caused to suffer severe personal injuries, pain and suffering, severe emotional distress, financial or economic loss, including but not limited to obligations for medical services and expenses, present and future lost wages, and other damages.

COUNT II: STRICT LIABILITY - DESIGN DEFECT

16.

Plaintiffs incorporate by reference paragraphs 1-11 of the Complaint as if fully set forth herein.

17.

The Product implanted in Plaintiff Wanda Queen was not reasonably safe for its intended use and was defective as a matter of law with respect to its design.

18.

As a direct and proximate result of the Product's

aforementioned defects, Plaintiff Wanda Queen was caused and/or in the future will be caused to suffer severe personal injuries, pain and suffering, severe emotional distress, financial or economic loss, including but not limited to obligations for medical services and expenses, present and future lost wages, and other damages.

19.

Defendant is strictly liable to Plaintiff Wanda Queen for designing, manufacturing, marketing, labeling, packaging and selling a defective product.

COUNT III: STRICT LIABILITY - MANUFACTURING DEFECT

20.

Plaintiffs incorporate by reference paragraphs 1-11 of the Complaint as if fully set forth herein.

21.

The Product implanted in Plaintiff Wanda Queen was not reasonably safe for its intended use and was defective as a matter of law with respect to its manufacture.

22.

As a direct and proximate result of the Product's aforementioned defects, Plaintiff Wanda Queen was caused and/or in the future will be caused to suffer severe personal injuries, pain and suffering, severe emotional distress, financial or economic loss, including but not limited to obligations for

medical services and expenses, present and future lost wages, and other damages.

23.

Defendant is strictly liable to Plaintiff Wanda Queen for designing, manufacturing, marketing, labeling, packaging and selling a defective product.

COUNT IV: STRICT LIABILITY - FAILURE TO WARN

24.

Plaintiffs incorporate by reference paragraphs 1-11 of the Complaint as if fully set forth herein.

25.

The Product implanted in Plaintiff Wanda Queen was not reasonably safe for its intended use and was defective as a matter of law due to its lack of appropriate and necessary warnings.

26.

As a direct and proximate result of the Product's aforementioned defects, Plaintiff Wanda Queen was caused and/or in the future will be caused to suffer severe personal injuries, pain and suffering, severe emotional distress, financial or economic loss, including but not limited to obligations for medical services and expenses, present and future lost wages, and other damages.

27.

Defendant is strictly liable to Plaintiff Wanda Queen for designing, manufacturing, marketing, labeling, packaging and selling a defective product.

COUNT V: BREACH OF EXPRESS WARRANTY

28.

Plaintiffs incorporate by reference paragraphs 1-11 of this Complaint as if fully set forth herein.

29.

Defendant made assurances to the general public, hospitals and health care professionals that the Product was safe and reasonably fit for its intended purpose.

30.

Plaintiff Wanda Queen and/or her health care provider chose the Product based upon Defendant's warranties and representations regarding the safety and fitness of the Product.

31.

Plaintiff Wanda Queen, individually and/or by and through her physician, reasonably relied upon Defendant's express warranties and guarantees that the Product was safe, merchantable, and reasonably fit for its intended purpose.

32.

Defendant breached these express warranties because the

Product implanted in Plaintiff Wanda Queen was unreasonably dangerous and defective and not as Defendant had represented.

33.

Defendant's breach of its express warranties resulted in the implantation of an unreasonably dangerous and defective product in Plaintiff Wanda Queen's body, placing said Plaintiff's health and safety in jeopardy.

34.

As a direct and proximate result of Defendant's breach of the aforementioned express warranties, Plaintiff Wanda Queen was caused and/or in the future will be caused to suffer severe personal injuries, pain and suffering, severe emotional distress, financial or economic loss, including but not limited to obligations for medical services and expenses, present and future lost wages, and other damages.

COUNT VI: BREACH OF IMPLIED WARRANTY

35.

Plaintiffs incorporate by reference paragraphs 1-11 of this Complaint as if fully set forth herein.

36.

Defendant impliedly warranted that the Product was merchantable and were fit for the ordinary purpose for which it was intended.

37.

When the Product was implanted in Plaintiff Wanda Queen to treat her pelvic organ prolapse, the Product was being used for the ordinary purpose for which it was intended.

38.

Plaintiff Wanda Queen, individually and/or by and through her physician, relied upon Defendant's implied warranty of merchantability in consenting to have the Product implanted in her.

39.

Defendant breached this implied warranty of merchantability because the Product implanted in Plaintiff Wanda Queen was neither merchantable nor suited for its intended use as warranted.

40.

Defendant's breach of its implied warranty resulted in the implantation of an unreasonably dangerous and defective product in Plaintiff Wanda Queen's body, placing said Plaintiff's health and safety in jeopardy.

41.

As a direct and proximate result of Defendant's breach of the aforementioned implied warranty, Plaintiff Wanda Queen was caused and/or in the future will be caused to suffer severe personal injuries, pain and suffering, severe emotional

distress, financial or economic loss, including but not limited to obligations for medical services and expenses, present and future lost wages, and other damages.

COUNT VII: LOSS OF CONSORTIUM

42.

Plaintiffs incorporate by reference paragraphs 1-11 of this Complaint as if fully set forth herein.

43.

As a direct and proximate result of the above-described injuries sustained by Plaintiff Wanda Queen, her husband, Plaintiff Greg Queen has suffered a loss of his wife's consortium, companionship, society, affection, services and support.

COUNT VIII: PUNITIVE DAMAGES

44.

Plaintiffs incorporate by reference paragraphs 1-43 of this Complaint as if fully set forth herein.

45.

Defendant knew or should have known that the Product was defective and presented unreasonable risks of harm to Plaintiff Wanda Queen.

46.

Defendant's conduct as described in this Complaint, for which Plaintiffs are entitled to recover compensatory damages,

manifested a conscious indifference to, and/or flagrant disregard of, the safety of those persons who might foreseeably have been harmed by the Product, including Plaintiff Wanda Queen, justifying the imposition of punitive damages.

WHEREFORE, Plaintiffs demand trial by jury, judgment against Defendant for compensatory and punitive damages in an amount exceeding \$75,000, as well as costs, attorney fees, interest, or any other relief, monetary or equitable, to which they are entitled.

PLAINTIFFS DEMAND A TRIAL BY JURY.

**BLASINGAME, BURCH, GARRARD &
ASHLEY, P.C.**

Attorneys for Plaintiffs

/s/ Henry G. Garrard, III

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P.O. Box 832
Athens, Georgia 30603
706-354-4000

CIVIL COVER SHEET

The JS44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

I. (a) PLAINTIFF(S)

WANDA QUEEN
GREG QUEEN

DEFENDANT(S)

C. R. BARD, INC.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF WAKE COUNTY, N.C. (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

BLASINGAME, BURCH, GARRARD & ASHLEY, P.C.
440 COLLEGE AVENUE, SUIT 320
P.O. BOX 832
ATHENS, GEORGIA 30603
706-354-4000

ATTORNEYS (IF KNOWN)

NELSON, MULLINS, RILEY & SCARBOROUGH
201 17TH STREET, NW
SUITE 1700
ATLANTA, GEORGIA 30363
404-322-6155

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. GOVERNMENT PLAINTIFF
2 U.S. GOVERNMENT DEFENDANT
3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY)
4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (FOR DIVERSITY CASES ONLY)

Table with columns for PLF and DEF, and rows for citizenship categories: 1 CITIZEN OF THIS STATE, 2 CITIZEN OF ANOTHER STATE, 3 CITIZEN OR SUBJECT OF A FOREIGN COUNTRY, 4 INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE, 5 INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE, 6 FOREIGN NATION.

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- 1 ORIGINAL PROCEEDING
2 REMOVED FROM STATE COURT
3 REMANDED FROM APPELLATE COURT
4 REINSTATED OR REOPENED
5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District)
6 MULTIDISTRICT LITIGATION
7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT

V. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

27 U.S.C. 1332

(IF COMPLEX, CHECK REASON BELOW)

- 1. Unusually large number of parties.
2. Unusually large number of claims or defenses.
3. Factual issues are exceptionally complex
4. Greater than normal volume of evidence.
5. Extended discovery period is needed.
6. Problems locating or preserving evidence
7. Pending parallel investigations or actions by government.
8. Multiple use of experts.
9. Need for discovery outside United States boundaries.
10. Existence of highly technical issues and proof.

CONTINUED ON REVERSE

FOR OFFICE USE ONLY

RECEIPT # AMOUNT \$ APPLYING IFP MAG. JUDGE (IFP)
JUDGE MAG. JUDGE (Referral) NATURE OF SUIT CAUSE OF ACTION

VI. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY TRACK

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
- 152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
- 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK

- 110 INSURANCE
- 120 MARINE
- 130 MILLER ACT
- 140 NEGOTIABLE INSTRUMENT
- 151 MEDICARE ACT
- 160 STOCKHOLDERS' SUITS
- 190 OTHER CONTRACT
- 195 CONTRACT PRODUCT LIABILITY
- 196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 210 LAND CONDEMNATION
- 220 FORECLOSURE
- 230 RENT LEASE & EJECTMENT
- 240 TORTS TO LAND
- 245 TORT PRODUCT LIABILITY
- 290 ALL OTHER REAL PROPERTY

TORTS - PERSONAL INJURY - "4" MONTHS DISCOVERY TRACK

- 310 AIRPLANE
- 315 AIRPLANE PRODUCT LIABILITY
- 320 ASSAULT, LIBEL & SLANDER
- 330 FEDERAL EMPLOYERS' LIABILITY
- 340 MARINE
- 345 MARINE PRODUCT LIABILITY
- 350 MOTOR VEHICLE
- 355 MOTOR VEHICLE PRODUCT LIABILITY
- 360 OTHER PERSONAL INJURY
- 362 PERSONAL INJURY - MEDICAL MALPRACTICE
- 365 PERSONAL INJURY - PRODUCT LIABILITY
- 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 370 OTHER FRAUD
- 371 TRUTH IN LENDING
- 380 OTHER PERSONAL PROPERTY DAMAGE
- 385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

- 422 APPEAL 28 USC 158
- 423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

- 441 VOTING
- 442 EMPLOYMENT
- 443 HOUSING/ ACCOMMODATIONS
- 444 WELFARE
- 440 OTHER CIVIL RIGHTS
- 445 AMERICANS with DISABILITIES - Employment
- 446 AMERICANS with DISABILITIES - Other

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- 462 NATURALIZATION APPLICATION
- 463 HABEAS CORPUS- Alien Detainee
- 465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

- 510 MOTIONS TO VACATE SENTENCE
- 530 HABEAS CORPUS
- 535 HABEAS CORPUS DEATH PENALTY
- 540 MANDAMUS & OTHER
- 550 CIVIL RIGHTS - Filed Pro se
- 555 PRISON CONDITION(S) - Filed Pro se

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

- 550 CIVIL RIGHTS - Filed by Counsel
- 555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

- 610 AGRICULTURE
- 620 FOOD & DRUG
- 625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
- 630 LIQUOR LAWS
- 640 R.R. & TRUCK
- 650 AIRLINE REGS.
- 660 OCCUPATIONAL SAFETY / HEALTH
- 690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK

- 710 FAIR LABOR STANDARDS ACT
- 720 LABOR/MGMT. RELATIONS
- 730 LABOR/MGMT. REPORTING & DISCLOSURE ACT
- 740 RAILWAY LABOR ACT
- 790 OTHER LABOR LITIGATION
- 791 EMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- 820 COPYRIGHTS
- 840 TRADEMARK

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- 830 PATENT

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

- 861 HIA (1395ff)
- 862 BLACK LUNG (923)
- 863 DIWC (405(g))
- 863 DIWW (405(g))
- 864 SSID TITLE XVI
- 865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

- 870 TAXES (U.S. Plaintiff or Defendant)
- 871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

- 400 STATE REAPPORTIONMENT
- 430 BANKS AND BANKING
- 450 COMMERCE/ICC RATES/ETC.
- 460 DEPORTATION
- 470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
- 480 CONSUMER CREDIT
- 490 CABLE/SATELLITE TV
- 810 SELECTIVE SERVICE
- 875 CUSTOMER CHALLENGE 12 USC 3410
- 891 AGRICULTURAL ACTS
- 892 ECONOMIC STABILIZATION ACT
- 893 ENVIRONMENTAL MATTERS
- 894 ENERGY ALLOCATION ACT
- 895 FREEDOM OF INFORMATION ACT
- 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE
- 950 CONSTITUTIONALITY OF STATE STATUTES
- 890 OTHER STATUTORY ACTIONS

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- 410 ANTITRUST
- 850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

- ARBITRATION (Confirm / Vacate / Order / Modify)

(Note: Mark underlying Nature of Suit as well)

*** PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3**

VII. REQUESTED IN COMPLAINT:

CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$ _____

JURY DEMAND YES NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

VIII. RELATED/REFILED CASE(S) IF ANY

JUDGE _____ DOCKET NO. SEE ATTACHED _____

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
- 4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
- 5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
- 6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

Beverly Pennington and Wayne Pennington v. C. R. Bard, Inc.

- 7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. _____, WHICH WAS DISMISSED. This case IS IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

/s/ Henry G. Garrard, III
SIGNATURE OF ATTORNEY OF RECORD

11/24/2010
DATE

VIII. RELATED/REFILED CASE(S) IF ANY:

Gail Chaplin, et al. v. C.R. Bard, Inc., et al., C.A. No. 1:09-1876
Cynthia H. Cowan et al. v. C.R. Bard, Inc., et al., C.A. No. 1:09-3339
Cindy Ezell, et al. v. C.R. Bard, Inc., C.A. No. 1:09-3539
Julie Dodd, et al. v. C.R. Bard, Inc., C.A. No. 1:09-3540
Janet McNally, et al. v. C.R. Bard, Inc., C.A. No. 1:09-3541
Patricia McCallan v. C.R. Bard, Inc., C.A. No. 1:09-3542
Sally Pete, et al. v. C.R. Bard, Inc., C.A. No. 1:09-3543
Anne McVay, et al. v. C.R. Bard, Inc., C.A. No. 1:09-3544
Beatrice Santillan, et al. v. C.R. Bard, Inc., C.A. No. 1:09-3545
Mary Lou Riley v. C.R. Bard, Inc., C.A. No. 1:09-3546
Kelly Poltermann, et al. v. C.R. Bard, Inc., C.A. No. 1:09-3642
Jacqueline M. Spangler v. C.R. Bard, Inc., et al., C.A. No. 1:09-3643
Kathryn Huston, et al. v. C.R. Bard, Inc., C.A. No. 1:09-3644
Linda Rizzo, et al. v. C.R. Bard, Inc., C.A. No. 1:09-3645
Jerry Dalman v. C.R. Bard, Inc., C.A. No. 1:09-3646
Debra Broussard, et al. v. Caldera Medical, Inc., et al., C.A. No. 1:10-1021
Jeannie Everly, et al. v. C.R. Bard, Inc., C.A. No. 1:10-1094
Lucy Tyson, et al. v. C.R. Bard, Inc., C.A. No. 1:10-1913
Susan B. Hirt, et al. v. Bard Peripheral Vascular, Inc., et al., C.A. No. 1:10-1924
Martha Bargeron v. C. R. Bard, Inc., C.A. No. 1:10-cv-03377

In Re Avaulta Pelvic Support Systems Products Liability Litigation, C. A. No. 2:10-2187 (S.D. W. Va.)