

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**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. 4**

(Common Benefit Matters)

**I. SCOPE OF ORDER**

This Order is entered to provide for the fair and equitable sharing among Plaintiffs and their counsel of the burden of services performed and expenses incurred by attorneys acting for the common benefit of all Plaintiffs in the above-captioned multidistrict litigation. The Court expresses no opinion regarding whether payment of any common-benefit fees or expenses will ever be appropriate. This Order merely provides guidance so that, should the issue become ripe during or after the closure of MDL 3081, any attorney applying for common-benefit fees or expenses will have notice of the standards that will be employed in assessing those applications. The Court may issue additional procedures, limitations, and guidelines in the future, if appropriate.

**A. Governing Principles and the Common-Benefit Doctrine**

“It is beyond dispute that the Court may establish fee structures designed to compensate [lead counsel] for their work on behalf of all plaintiffs involved in [this MDL].” *In re Bard IVC Filters Prods. Liab. Litig.*, 603 F.Supp.3d 822, 832 (D. Ariz. 2022)

1 (alteration in original) (quoting *In re Gen. Motors LLC Ignition Switch Litig.*, 477  
2 F.Supp.3d 170, 189-90 (S.D.N.Y. 2020)), *aff'd*, 81 F.4th 897 (9th Cir. 2023). The Court's  
3 authority to establish such fee structures derives from the United States Supreme Court's  
4 common-benefit doctrine, as established in *Trustees v. Greenough*, 105 U.S. 527 (1881);  
5 refined in, *inter alia*, *Central Railroad & Banking Co. v. Pettus*, 113 U.S. 116 (1885),  
6 *Sprague v. Ticonic National Bank*, 307 U.S. 161 (1939), *Mills v. Electric Auto-Lite Co.*,  
7 396 U.S. 375 (1970), and *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980); and approved  
8 and implemented in the MDL context in, *inter alia*, *In re Air Crash Disaster at Florida*  
9 *Everglades on December 29, 1972*, 549 F.2d 1006 (5th Cir. 1977), and *In re MGM Grand*  
10 *Hotel Fire Litigation*, 660 F.Supp. 522 (D. Nev. 1987).

11 The Court's authority to establish a fund and to order contributions also derives  
12 from its equitable authority and inherent managerial power over this litigation. *See, e.g.*,  
13 *In re Volkswagen "Clean Diesel" Mktg., Sales Pracs., & Prods. Liab. Litig.*, 914 F.3d 623,  
14 644 (9th Cir. 2019); *In re Diet Drugs Prod. Liab. Litig.*, 582 F.3d 524, 546-47 (3d Cir.  
15 2009); *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 771 (11th Cir. 1991); *In re*  
16 *Air Crash Disaster*, 549 F.2d at 1008; *In re Vioxx Prods. Liab. Litig.*, 802 F.Supp.2d 740,  
17 770 (E.D. La. 2011); MANUAL FOR COMPLEX LITIGATION § 14.121 (4th ed. 2004); *see also*  
18 *In re Bard IVC Filters*, 603 F.Supp.3d at 832 (citing *In re Bos. Sci. Corp., Pelvic Repair*  
19 *Sys. Prods. Liab. Litig.*, 2019 WL 385420, at \*5 (S.D.W. Va. Jan. 30, 2019) ("A separate  
20 source of authority for MDL courts to assess attorneys' fees in common benefit fund cases  
21 comes from the inherent managerial power over the consolidated litigation.")).

22 Common-benefit work product includes all work performed for the benefit of all  
23 Plaintiffs, including pre-trial matters, discovery, trial preparation, a potential settlement  
24 process, and all other work that advances this litigation to conclusion. Evaluating  
25 contribution to the common benefit is a qualitative analysis because "not all types of work  
26 are created equal." *In re Vioxx*, 802 F.Supp.2d at 772. Although some work is less time  
27 consuming in hours spent, it has a greater impact on the litigation. Hours spent drafting  
28 critical briefs, presenting oral arguments, or preparing for and taking depositions of key

1 witnesses, for example, generally provide greater common benefit than hours reviewing  
2 and coding documents. The Court expresses no opinion at this time whether payment for  
3 common-benefit fees is or will be appropriate, but if at some future date the Court does  
4 find such an award appropriate, the analysis will be guided by the value of the work  
5 performed and how it contributed to the common benefit. *See, e.g., In re 3M Combat Arms*  
6 *Earplug Prods. Liab. Litig.*, No. 3:19-md-2885, Doc. 488, at \*3 (N.D. Fla. July 12, 2019).

7 **B. Application of this Order**

8 This Order applies to all cases now pending and any case later filed in, transferred  
9 to, or removed to this Court and treated as part of the coordinated proceeding known as *In*  
10 *re: Bard Implanted Port Catheter Products Liability Litigation*, MDL 3081. This Order  
11 further applies to each attorney who represents a Plaintiff with a case now pending in or  
12 later filed in, transferred to, or removed to this Court, regardless of whether the Plaintiff's  
13 attorney signs the "Participation Agreement," attached hereto as Exhibit A.

14 This Order shall also apply to any private lienholder who obtains reimbursement  
15 from any Plaintiff whose case is subject to this Order because that lienholder is benefiting  
16 from the common-benefit work performed by Participating Counsel. Such entities shall be  
17 subject to this Order regardless of execution of the Participation Agreement, as they are  
18 seeking to obtain part of the recovery obtained by a Plaintiff who is subject to this Order  
19 and the jurisdiction of this Court. Counsel or any private lienholder shall pay amounts  
20 consistent with the terms of Paragraph IV.B.3. of the Bard IPC Fee Fund and the Bard IPC  
21 Expense Fund, as those terms are defined below. Private lienholders' counsel shall not be  
22 eligible to make a claim to receive any distribution from the Bard IPC Fee Fund or the Bard  
23 IPC Expense Fund.

24 **C. Participation Agreement (Exhibit A)**

25 Exhibit A, attached hereto and incorporated herein, is a voluntary agreement  
26 between and among Plaintiffs' attorneys who have cases pending in the MDL and/or in  
27 state court. The Participation Agreement is a private and cooperative agreement between  
28 and among Plaintiffs' attorneys only ("Participating Counsel"); it is not an agreement with

1 Defendants or their counsel. Participating Counsel shall automatically include all present  
2 and future members of Plaintiffs' Leadership Counsel ("PLC"), as designated in Case  
3 Management Order No. 1 ("CMO No. 1"), by virtue of their appointment by the Court as  
4 Plaintiffs' Co-Lead Counsel, Plaintiffs' Executive Committee ("PEC"), Plaintiffs' Liaison  
5 Counsel, Plaintiffs' Steering Committee ("PSC"), and any other attorney who executes the  
6 Participation Agreement. Executed Participation Agreements must be provided to and  
7 maintained by Plaintiffs' Co-Lead Counsel and the Common-Benefit Special Master.

8 All Plaintiffs' attorneys who currently have cases pending in this Court or in any  
9 state court shall, within 30 days of this Order, designate whether or not they are a  
10 Participating Counsel or a Non-Participating Counsel by signing the Participation  
11 Agreement. Any Plaintiffs' attorney who does not yet have a Bard Implanted Port Catheter  
12 ("IPC") case filed in any federal or state court shall designate whether or not they are a  
13 Participating Counsel or a Non-Participating Counsel by signing the Participation  
14 Agreement: (a) within 30 days of the date their first case is filed in or otherwise docketed  
15 in this Court via direct filing, transfer, or removal; or (b) within 30 days of the date their  
16 first case is filed in any state court, if that lawyer intends to voluntarily become a  
17 Participating Counsel at the fee and expense percentages set forth herein. Failure to  
18 execute the Participation Agreement indicating that an attorney will be a Participating  
19 Counsel within the time frame set forth in this paragraph may result in higher percentages  
20 for common-benefit assessment as a result of such later participation. Any such higher  
21 percentages must be approved by the Court.

22 Participating Counsel shall be entitled to receive all common-benefit work product  
23 created by those attorneys who have also executed, or have been deemed to have executed,  
24 the Participation Agreement, regardless of the venue in which Participating Counsel's  
25 cases are pending. In return, Participating Counsel agrees to pay common-benefit  
26 assessments from the gross recoveries obtained in all filed, unfiled, and tolled cases and/or  
27 claims in state and/or federal court in which they have a fee interest, regardless of the size  
28 of that fee interest. All Participating Counsel are bound by the terms, conditions, and

1 obligations of this Order, as well as any other future common-benefit orders of this Court,  
2 regardless of whether this MDL is ongoing or closed. *See In re Bard IVC Filters*, 603  
3 F.Supp.3d at 831-39; *see also In re Gen. Motors*, 477 F.Supp.3d at 192; *In re Bos. Sci.*  
4 *Corp.*, 2019 WL 385420, at \*5; *In re Vioxx*, 760 F.Supp.2d at 648. Counsel who do not  
5 execute the Participation Agreement are not entitled to receive common-benefit work  
6 product and may be subject to an increased assessment on all Bard IPC cases in which they  
7 have a fee interest if they receive common-benefit work product or otherwise benefit from  
8 such work product.

9       The Court recognizes the jurisdictional rights and obligations of the state courts to  
10 conduct their state-court litigation as they so determine and that such litigations may  
11 include counsel who are Participating Counsel. Neither the Participation Agreement nor  
12 this Order shall be cited by a party to the Participation Agreement in any other court in  
13 support of a position that adversely impacts the jurisdictional rights and obligations of the  
14 state courts and state-court Participating Counsel.

#### 15       **D. Assessments**

16       From time to time, as necessary to fund common-benefit activity in this litigation,  
17 the Common-Benefit Committee established by the PLC and consisting of members  
18 thereof, in consultation with the Common-Benefit Special Master, must make assessments  
19 and may receive and hold funds in the Bard IPC Expense Fund. Once notice of an  
20 assessment is provided, the assessed firms will have 30 days to deposit their respective  
21 assessments into the Bard IPC Expense Fund.

22       If, after 30 days, a firm has not deposited its assessment, Participating Counsel from  
23 that firm will be ineligible for common-benefit work while the firm is delinquent in its  
24 assessment and any common-benefit work performed while the firm is in arrears will not  
25 be eligible for compensation. Failure to deposit assessments on a timely basis will also be  
26 considered during the Court's annual leadership reappointment process.

27       If a firm fails to deposit its assessment within 60 days of receiving notice of an  
28 assessment and the firm does not demonstrate to the satisfaction of the Common-Benefit

1 Committee and Common-Benefit Special Master good cause for such delinquency,  
2 Participating Counsel from that firm may be rendered ineligible for any compensation for  
3 common-benefit work or expenses.

4 **II. COMMON-BENEFIT EXPENSES**

5 **A. Qualified Time and Expenses Eligible for Reimbursement**

6 In order to be eligible for reimbursement, common-benefit time and expenses must  
7 meet the requirements of this section and the limitations set forth in the Participation  
8 Agreement. Specifically, the time and expenses must be: (a) for the common benefit;  
9 (b) appropriately authorized by Plaintiffs' Co-Lead Counsel, as defined in footnote 1 of the  
10 Participation Agreement; (c) timely submitted within the defined limitations set forth in  
11 this Order; and (d) verified by a partner or shareholder in the submitting firm.

12 For necessary scrutiny of time and expense submissions, Participating Counsel must  
13 use the Excel forms provided as Exhibits B and C to this Order. This means that each  
14 monthly submission will consist of one Excel file, within which there will be two "sheets"  
15 (marked by tabs at the bottom): "Monthly Expense Report" and "Monthly Time Report."  
16 In all reports, the person who performed each task should be identified in the column called  
17 "Last Name, First Name" by their complete last name, a comma, and their complete first  
18 name (e.g., Smith, John). Please do not use abbreviations or initials in this column. In all  
19 reports, the date must be provided in month/day/year format (e.g., 9/25/2023).

20 Time and expense submissions are to be made on the 15th day of each month,  
21 beginning on November 15, 2023, at which date all qualifying time and expenses up to and  
22 including October 31, 2023, must be e-mailed to [SMBIPC@ccadr.com](mailto:SMBIPC@ccadr.com). Thereafter, each  
23 submission should contain all time and expenses incurred during the calendar month prior  
24 to the submission date (i.e., the December 15, 2023 submission should include all time and  
25 expenses incurred during the month of November 2023).

26 Submissions of time and expenses made after the 15th day of the month following  
27 the month in which the time or expenses were incurred may be rejected. Only time and  
28 expenses as defined in the Participation Agreement will be considered for common-benefit

1 consideration. Subject to the terms of the Participation Agreement, Participating Counsel's  
2 expenses will be considered for common-benefit expenses commencing August 15, 2023,  
3 the date of issuance of this Court's Order scheduling an initial case management  
4 conference. *See* Doc. 4. To the extent Participating Counsel incurred expenses prior to  
5 August 15, 2023, for the common benefit of all cases (e.g., activities associated with  
6 completing the items to comply with CMO No. 1), Participating Counsel shall submit such  
7 expenses on November 15, 2023. As with all time and expense submissions, only that time  
8 and those expenses incurred for the common benefit of all cases, consistent with the terms  
9 of the Participation Agreement, shall be considered. Any common-benefit work accrued  
10 before August 15, 2023, will be evaluated pursuant to the same criteria, scrutiny, audit, and  
11 guidelines as common-benefit work commencing August 15, 2023. In evaluating whether  
12 to pay for common-benefit work incurred before August 15, 2023, the Court will consider  
13 the extent to which the work truly benefited Plaintiffs who joined the MDL; the extent to  
14 which the work was duplicated by work incurred after August 15, 2023, and submitted for  
15 reimbursement; the extent to which the submitting attorneys received compensation for the  
16 work from settlements completed before August 15, 2023; and other relevant factors.

17 **B. Shared and Held Common-Benefit Expenses**

18 **1. Shared Costs**

19 Shared Costs are costs incurred for the common benefit of all Plaintiffs. Shared  
20 Costs will be paid out of a separate Bard IPC Expense Fund established and administered  
21 by Plaintiffs' Co-Lead Counsel and funded through monetary assessments, as described in  
22 Paragraph I.D., by all members of the PLC defined in CMO No. 1 and others as determined  
23 by Plaintiffs' Co-Lead Counsel. All Shared Costs must be approved by Plaintiffs' Co-Lead  
24 Counsel prior to payment. Shared Costs include: (a) certain filing and service costs related  
25 to common issues; (b) deposition, court-reporter, and video-technician costs for non-case-  
26 specific depositions; (c) costs necessary for creation and maintenance of a document  
27 depository; the operation and administration of the depository; the search, categorization,  
28 and organization of documents, depositions, and evidence; and any equipment required for

1 the depository; (d) Plaintiffs' Co-Lead Counsel administrative matters (e.g., expenses for  
2 equipment, technology, courier services, telecopier, electronic service, photocopy and  
3 printing, secretarial/temporary staff, etc.); (e) PLC group administrative matters such as  
4 meetings and conference calls; (f) accountant and administrative consultant and auditing  
5 fees; (g) generic expert-witness and consultant fees and expenses; (h) printing, copying,  
6 coding, and scanning, including out-of-house or extraordinary firm costs; (i) research by  
7 outside third-party vendors, consultants, and/or attorneys; (j) translation costs; (k) bank or  
8 financial-institution charges; (l) certain investigative services; (m) special-master and/or  
9 mediator charges; and (n) such other costs as the Court deems appropriate for the efficient  
10 prosecution of this MDL common to all Plaintiffs.

11 If a dispute arises regarding whether a cost is a Shared Cost to be paid from the Bard  
12 IPC Expense Fund, the Common-Benefit Special Master, in consultation with the  
13 Common-Benefit Committee, will make the final determination to pay or reject the  
14 expense. All proposed contracts with vendors must be reviewed and approved by the  
15 Common-Benefit Committee in order for that vendor to be eligible for payment from the  
16 Bard IPC Expense Fund.

## 17 **2. Held Costs**

18 Held Costs are costs incurred in connection with authorized common-benefit work  
19 but that will be carried by each Participating Counsel in MDL 3081 through the pendency  
20 of the MDL. Held Costs are those that do not fall into any of the above categories of Shared  
21 Costs but are incurred for the benefit of all Plaintiffs. Held costs can also include  
22 unreimbursed but authorized Shared Costs. No specific client-related costs shall be  
23 considered as Held Costs.

## 24 **C. Authorization and Submission**

25 The Participation Agreement sets forth the guidelines for authorizing and submitting  
26 expenses for the common benefit. All Participating Counsel seeking reimbursement of  
27 Held Costs shall follow those guidelines. When submitting expenses pursuant to the  
28 guidelines set forth in the Participation Agreement, no entry should contain more than one



1 expense category identified in Exhibit B. If, on the same day, one person incurs two  
2 expenses that fall into two different categories, then two separate entries for that person on  
3 that date should be noted, each with the appropriate expense description and category code.  
4 Likewise, when practical, no listed expense entry should include expenses incurred by  
5 more than one person. If multiple people incur the same expense for the same category, a  
6 separate entry should be noted for each person, unless a single person paid the expense for  
7 multiple people. Every expense entry should be as detailed and specific as possible.  
8 Expense entries without sufficient detail may be rejected by Plaintiffs' Co-Lead Counsel  
9 and/or the Common-Benefit Special Master.

#### 10 **D. Limitations on Expenses**

##### 11 **1. Travel Limitations**

12 Except in extraordinary circumstances approved in advance by Plaintiffs' Co-Lead  
13 Counsel, all travel reimbursements are subject to the following limitations:

- 14
- 15 i. Airfare: Only the price of a coach seat for a reasonable itinerary  
16 will be reimbursed. Business/First Class Airfare will not be  
17 fully reimbursed, except for international flights, which  
18 requires prior approval by Plaintiffs' Co-Lead Counsel in order  
19 to be considered for reimbursement. Use of a private aircraft  
20 will not be reimbursed, but reimbursement may be sought for  
21 the cost of a coach seat for a comparable itinerary. If  
22 Business/First Class Airfare is used on domestic flights, then  
23 the difference between the Business/First Class Airfare and the  
24 coach fare must be shown on the travel reimbursement form,  
25 and only the coach fare will be reimbursed; absent such  
26 documentation, the expense may not be reimbursed.
- 27 ii. Hotel: Hotel room charges for the average available room rate  
28 of a business hotel, including the Hyatt, Westin, and Marriott  
hotels, in the city in which the stay occurred will be  
reimbursed. Luxury hotels will not be fully reimbursed but  
will be reimbursed at the average available rate of a business  
hotel.
- iii. Meals: Meal expenses, including gratuities, must be reasonable  
and shall not exceed the applicable maximum daily M&IE rate  
for the locality per person as set by GSA Per Diem Rates (e.g.,  
\$156/day for Phoenix in October 2023). There will be no  
reimbursement for alcoholic beverages, mini-bar items, or  
movies.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- iv. Cash Expenses: Miscellaneous cash expenses for which receipts generally are not available (tips, luggage handling, pay telephone, etc.) will be reimbursed up to \$50.00 per trip, as long as the expenses are properly itemized.
- v. Rental Automobiles: Luxury automobile rentals will not be fully reimbursed, unless only luxury automobiles were available. If luxury automobiles are selected when non-luxury vehicles were available, then the difference between the luxury and non-luxury vehicle rates must be shown on the travel reimbursement form, and only the non-luxury rate may be claimed, unless a larger-sized vehicle is needed to accommodate several counsel or equipment; absent such documentation, the expense may not be reimbursed.
- vi. Mileage: Mileage claims must be documented by stating origination point, destination, total actual miles for each trip, and the rate per mile paid by the member’s firm. The maximum allowable rate will be the maximum rate allowed by the IRS as of the date of the trip.
- vii. Uber/Taxi: The use of Uber/Lyft or other ride-share services shall be at the standard rate, unless the standard rate is not available due to availability or surge-rate implementation. Use of Uber Black and/or Uber Select or any advanced level of rate charge shall not be utilized unless there is no available alternative or unless they are required for the transport of large groups of individuals. In the event Black, Select, or other upgraded services are used, names of the individuals participating in the rides should be listed.

**2. Non-Travel Limitations**

- i. Client Recruitment: Expenses for advertising or other expenses for the purposes of marketing, client recruitment, or client acquisition are not reimbursable as common-benefit expenses.
- ii. Firm Overhead Costs: Firm overhead costs (including but not limited to expenses for office supplies or equipment, standard phone or internet service, maintenance of firm website, etc.) are not reimbursable as common-benefit expenses.
- iii. Shipping, Courier, and Delivery Charges: All claimed expenses must be documented with bills showing the sender, origin of the package, recipient, and destination of the package.
- iv. Postage Charges: A contemporaneous postage log or other supporting documentation must be maintained and submitted. Postage charges are to be reported at actual cost.
- v. In-House Photocopy: A contemporaneous photocopy log or other supporting documentation must be maintained and submitted. The maximum copy charge is 15 cents per page.

1           **E.     Verification**

2           Expense submissions in the form of Exhibit B shall be certified by a partner or  
3 shareholder in each firm attesting to the accuracy of such submissions. Attorneys shall keep  
4 receipts for all expenses. Credit-card receipts are an appropriate form of verification if  
5 accompanied by a declaration from counsel that the expense was incurred and paid for the  
6 common benefit.

7           **III.   COMMON-BENEFIT WORK**

8           **A.     Qualified Work Eligible for Reimbursement**

9           Only Participating Counsel are eligible for reimbursement for time and efforts  
10 expended for the common benefit. Participating Counsel shall be eligible for  
11 reimbursement for time and efforts expended for common-benefit work if the time and  
12 efforts are: (a) for the common benefit; (b) appropriately authorized by Plaintiffs' Co-Lead  
13 Counsel, as described in footnote 1 of the Participation Agreement; (c) timely submitted  
14 within the defined limitations set forth in this Order; and (d) verified by a partner or  
15 shareholder in the submitting firm. Any common-benefit work accrued before August 15,  
16 2023, will be evaluated pursuant to the same criteria, scrutiny, audit, and guidelines as  
17 common-benefit work commencing August 15, 2023. In evaluating whether to pay for  
18 common-benefit work incurred before August 15, 2023, the Court will consider the extent  
19 to which the work truly benefited Plaintiffs who joined the MDL; the extent to which the  
20 work was duplicated by work incurred after August 15, 2023, and submitted for  
21 reimbursement; the extent to which the submitting attorneys received compensation for the  
22 work from settlements completed before August 15, 2023; and other relevant factors.

23           Any counsel intending to seek reimbursement for time and efforts expended for  
24 common-benefit work agrees to the terms and conditions herein, including submitting to  
25 this Court's jurisdiction and agreeing that this Court has plenary authority regarding the  
26 award and allocation of common-benefit fees and expense reimbursements in this matter,  
27 regardless of whether the MDL is ongoing or closed. *See, e.g., In re Bard IVC Filters*, 603  
28 F.Supp.3d at 831-39.

1           **B.     Compensable Common-Benefit Work**

2           As this litigation progresses and common-benefit work product continues to be  
3 generated, Plaintiffs’ Co-Lead Counsel may assign Participating Counsel with common-  
4 benefit work. Common-benefit work shall include only work specifically assigned by  
5 Plaintiffs’ Co-Lead Counsel. Examples of common-benefit work include but are not  
6 limited to the following work as assigned by Plaintiffs’ Co-Lead Counsel: drafting  
7 consolidated pleadings; legal research and briefing; authorized court appearances; oral  
8 argument; active participation in PLC meetings, conference calls, and communications;  
9 maintenance of and working in the document depository; document review and coding;  
10 preparing, responding to, and dealing with common-benefit discovery; expert retention and  
11 development; preparing for and conducting authorized depositions of Defendants, third-  
12 party witnesses, and experts; and activities associated with preparation for trial and the trial  
13 of any cases designated as “common-benefit trials” by Plaintiffs’ Co-Lead Counsel.

14           **C.     Authorization and Time Keeping**

15           Participating Counsel intending to seek payment of common-benefit attorneys’ fees  
16 shall follow the guidelines set forth in the Participation Agreement and approved by  
17 Plaintiffs’ Co-Lead Counsel. All common-benefit time must be authorized and accurately  
18 and contemporaneously maintained. For example, as detailed in the Participation  
19 Agreement, time submissions must use tenth-of-an-hour increments (e.g., 0.1) and include  
20 sufficient detail to identify the precise task and how it relates to common-benefit work.  
21 Each time entry must be categorized using one of the categories in Exhibit C. When  
22 possible, a more specific category should be used instead of a more general category.  
23 Under no circumstances should Participating Counsel make up new categories. Plaintiffs’  
24 Co-Lead Counsel and/or the Common-Benefit Special Master will provide further  
25 guidance as necessary.

26     ///

27     ///

28     ///

1 **IV. PLAINTIFFS' LITIGATION FEE AND EXPENSE FUNDS**

2 **A. Establishing the Fee and Expense Funds**

3 At an appropriate time, Plaintiffs' Co-Lead Counsel shall ask the Court to direct that  
4 two interest-bearing accounts be established to receive and disburse funds as provided in  
5 this Order (the "Funds"). The first fund shall be designated the "Bard IPC Fee Fund" and  
6 the second fund shall be designated the "Bard IPC Expense Fund." The Funds will be held  
7 subject to the direction of the Court.

8 By subsequent order of this Court, the Court will appoint a qualified certified public  
9 accountant ("CPA") to serve as escrow agent over the Funds, to keep detailed records of  
10 all deposits and withdrawals, and to prepare tax returns and other tax filings in connection  
11 with the Funds. Such subsequent order shall specify the hourly rates to be charged by the  
12 CPA and the CPA's assistants, who shall be utilized where appropriate to control costs.  
13 The CPA shall submit quarterly detailed bills to the Court and to Plaintiffs' Co-Lead  
14 Counsel. Upon approval by the Court, the CPA's bills shall be paid from the Bard IPC  
15 Expense Fund and shall be considered a Shared Cost. Plaintiffs' Co-Lead Counsel shall  
16 provide a copy of this Order and later orders to the CPA.

17 **B. Payments Into the Fee and Expense Funds**

18 **1. General Standards**

19 All Plaintiffs and their attorneys who are subject to this Order and who agree to  
20 settle, compromise, dismiss, or reduce the amount of a Bard IPC claim or, with or without  
21 trial, recover a judgment for monetary damages or other monetary relief, including  
22 compensatory and punitive damages, with respect to Bard IPC claims, are subject to an  
23 assessment of the Gross Monetary Recovery, as provided herein. This assessment shall  
24 apply to all of the cases of the Plaintiffs' attorneys who are subject to this Order, whether  
25 as sole counsel or co-counsel, including all filed, unfiled, and tolled cases and/or claims in  
26 state and/or federal court in which the Plaintiffs' attorneys have a fee interest, regardless  
27 of the size of the interest or whether this MDL is ongoing or closed.  
28

## 2. Gross Monetary Recovery

Gross Monetary Recovery includes any and all amounts paid to Plaintiffs (either directly or through Plaintiffs' counsel) by Defendants through a settlement or pursuant to a judgment. In measuring the Gross Monetary Recovery," the parties are to (a) exclude court costs that are to be paid by the Defendants; (b) include any payments to be made by the Defendants on an intervention asserted by third-parties, such as to physicians, hospitals, or other healthcare providers in subrogation related to treatment of a Plaintiff, and any governmental liens or obligations (e.g., Medicare/Medicaid); and (c) include the present value of any fixed and certain payments to be made in the future.

## 3. Assessment Amount

Given the incipient nature of this litigation and the volume of work necessary to complete it by September 2026, the assessment amount is 10%, which includes 8% for attorneys' fees and 2% for expenses. *See, e.g., In re Bard IVC Filters Prods. Liab. Litig.*, 2021 WL 565336, at \*4 (D. Ariz. Feb. 11, 2021); *In re Bard IVC Filters Prods. Liab. Litig.*, No. MDL 15-02641-PHX-DGC, Doc. 18038, at \*3 (D. Ariz. May 31, 2019) (increasing fee assessment from 6% to 8% and maintaining 2% expense assessment for total holdback of 10%). The 10% assessment represents a "holdback," *see, e.g., In re Zyprexa Prods. Liab. Litig.*, 467 F.Supp.2d 256, 266-67 (E.D.N.Y. 2006), as applied in many recent MDLs, *see, e.g., In re Social Media Adolescent Addiction/Personal Injury Prods. Liab. Litig.*, No. 4:22-md-3047-YGR, Doc. 169, at \*21-22 (N.D. Cal. Mar. 6, 2023) (10% holdback); *In re Philips Recalled CPAP, Bi-Level Pap, and Mechanical Ventilator Prods. Liab. Litig.*, No. 2:21-mc-01230-JFC, Doc. 717, at \*3 (W.D. Pa. Aug. 29, 2022) (same); *In re Allergan Biocell Textured Breast Implant Prods. Liab. Litig.*, No. 2:19-md-02921-BRM-ESK, Doc. 370, at \*13 (D.N.J. Dec. 6, 2021) (same); *In re Ethicon Physiomesh Flexible Composite Hernia Mesh Prods. Liab. Litig.*, No. 1:17-md-02782-RWS, Doc. 662, at \*4 (N.D. Ga. Sept. 11, 2020) (same); *In re DePuy Orthopaedics, Inc., Pinnacle Hip Implant Prods. Liab. Litig.*, No. 3:11-md-02244-K, Doc. 1031, at \*10 (N.D. Tex. July 22, 2019) (same); *In re Davol, Inc./C.R. Bard, Inc., Polypropylene Hernia Mesh Prods. Liab. Litig.*, No. 2:18-md-

1 02846-EAS-KAJ, Doc. 70, at \*6 (E.D. Ohio Dec. 11, 2018) (same); *cf. In re Atrium Med.*  
2 *Corp., C-Qur Mesh Prods. Liab. Litig.*, No. 1:16-md-02753-LM, Doc. 1324, at \*1 (D.N.H.  
3 Mar. 15, 2022) (12% holdback); *In re Proton-Pump Inhibitor Prods. Liab. Litig.*, No. 2:17-  
4 md-02789-CCC-LDW, Doc. 683, at \*1 (D.N.J. Aug. 5, 2021) (same); *In re Xarelto Prods.*  
5 *Liab. Litig.*, No. 2:14-md-02592-EEF-MBN, Doc. 17636, at \*1 (E.D. La. Apr. 3, 2020)  
6 (same); *In re Zostavax Prods. Liab. Litig.*, No. 2:18-md-02848-HB, Doc. 502, at \*6 (E.D.  
7 Pa. Feb. 12, 2020) (same).

8       However, if any counsel fails to timely execute the Participation Agreement, such  
9 counsel and members of counsel's firm may be subject to an increased assessment.  
10 Moreover, if a Non-Participating Counsel receives common-benefit work product or  
11 otherwise benefits from the common-benefit work product, such counsel and the cases in  
12 which counsel has a fee interest may be subject to an increased assessment.

#### 13                   **4. The Parties' Obligations**

14       Upon learning of a case being filed in any state court, Defendants' Counsel shall  
15 promptly forward a copy of the state-court complaint to Plaintiffs' Co-Lead Counsel so  
16 that Plaintiffs' Co-Lead Counsel can notify the state-court attorneys of this Order and offer  
17 them the opportunity to become Participating Counsel.

18       Plaintiffs' Co-Lead Counsel shall provide Defendants' Counsel, the Common-  
19 Benefit Special Master, and the Court or its designee with a list of cases and/or counsel  
20 who have entered into written agreements with the PLC by executing the Participation  
21 Agreement. This same list shall be made available to all Plaintiffs' counsel with cases in  
22 the MDL, as well as any other Plaintiffs' counsel who signs the Participation Agreement,  
23 upon request. In the event there is a dispute as to whether a case should be on the list,  
24 Plaintiffs' Co-Lead Counsel shall seek to resolve the matter with the particular Plaintiff's  
25 counsel informally, and if that is unsuccessful, upon motion to the Court.

26       Defendants and their counsel shall not distribute any settlement proceeds to any  
27 Plaintiff (or anyone on behalf of a Plaintiff, including Plaintiff's counsel) until after  
28 (1) Defendants' counsel notifies Plaintiffs' Co-Lead Counsel in writing of the existence of

1 a settlement and the name of the individual Plaintiff and Plaintiff's attorney (without  
2 disclosing the amount of the settlement); and (2) Plaintiffs' Co-Lead Counsel has advised  
3 Defendants' counsel in writing whether or not the individual Plaintiff's attorney's cases  
4 are subject to an assessment and the amount (stated as a percentage of the recovery) of the  
5 assessment pursuant to this Order. Plaintiffs' Co-Lead Counsel shall share this information  
6 only with each other and shall otherwise keep this information confidential. For cases  
7 subject to an assessment, Defendants are directed to withhold an assessment from any and  
8 all amounts paid to Plaintiffs and their counsel and to pay the assessment directly into the  
9 Funds as a credit against the settlement or judgment. No orders of dismissal of any  
10 Plaintiff's claim, subject to this Order, shall be entered unless accompanied by a certificate  
11 of Plaintiff's and Defendants' counsel that the assessment, if applicable, will be withheld  
12 and will be deposited into the Funds at the same time the settlement proceeds are paid to  
13 settling counsel. If, for any reason, the assessment is not or has not been so withheld, the  
14 Plaintiff and his/her counsel are jointly responsible for paying the assessment into the Fund  
15 promptly.

16 Plaintiffs' Co-Lead Counsel shall keep track of settlements and deposits into the  
17 Funds for those settlements. Plaintiffs' Co-Lead Counsel shall provide the Court monthly  
18 reports showing the aggregate of the monthly deposits, disbursements, interest earned,  
19 financial institution charges, if any, and current balance. If necessary, Plaintiffs' Co-Lead  
20 Counsel may request that the Court require Defendants to disclose to the Court the amounts  
21 of the settlements reached with each Plaintiff in order to confirm that appropriate  
22 assessments have been deposited in the Funds.

## 23 **V. DISTRIBUTIONS**

### 24 **A. Court Approval**

25 The amounts deposited into the Bard IPC Fee Fund and the Bard IPC Expense Fund  
26 shall be available for distribution to Participating Counsel who have performed  
27 professional services or incurred expenses for the common benefit in accordance with this  
28 Order and the Participation Agreement. No amounts will be disbursed without review and



1 approval by the Court, or such other mechanism as the Court may order. Specifically, such  
2 sums shall be distributed only upon order of this Court. This Court retains jurisdiction over  
3 any common-benefit award or distribution, regardless of whether this MDL is ongoing or  
4 closed. *See, e.g., In re Bard IVC Filters*, 603 F.Supp.3d at 831-39.

5 **B. Application for Distribution**

6 Each Participating Counsel who does common-benefit work has the right to present  
7 their claim(s) for compensation and/or reimbursement prior to any distribution approved  
8 by this Court. Any counsel who does not sign the Participation Agreement shall not be  
9 eligible to receive common-benefit payments for any work performed or expenses  
10 incurred.

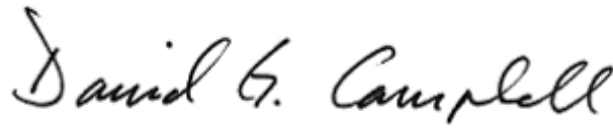
11 At the appropriate time, this Court shall request that Plaintiffs' Co-Lead Counsel  
12 make recommendations to this Court for distributions to Participating Counsel who have  
13 performed common-benefit work. Plaintiffs' Co-Lead Counsel shall employ the services  
14 of the Common-Benefit Special Master who will serve in an advisory and consulting  
15 capacity to Plaintiffs' Co-Lead Counsel and PLC. The Common-Benefit Special Master  
16 shall periodically audit the time submissions of Participating Counsel whose consultation  
17 and advice regarding billing practices will be shared with Participating Counsel so as to  
18 ensure the appropriate methods, content, and substance of time submissions consistent with  
19 the guidelines set forth in this Order. Plaintiffs' Co-Lead Counsel, in consultation with the  
20 Common-Benefit Special Master, shall determine the most fair and efficient manner by  
21 which to evaluate all of the time and expense submissions in making their recommendation  
22 to this Court. This Court will give due consideration to the recommendation of the  
23 Plaintiffs' Co-Lead Counsel in conjunction with such expert consultation, advice, and  
24 recommendations.

25 To the extent that the billing records of any Participating Counsel or any Plaintiff's  
26 attorney are shared with Plaintiffs' Co-Lead Counsel, the CPA, the Common-Benefit  
27 Special Master, or the Court (subject to appropriate protections when filing), such records  
28 retain their status as work-product materials and are not discoverable by Defendants.

1 **VI. QUARTERLY REPORTS TO THE COURT**

2 Plaintiffs' Co-Lead Counsel and/or the Common-Benefit Special Master shall  
3 provide the Court with quarterly reports on the fees and expenses submitted by various  
4 Plaintiffs' counsel for eventual reimbursement from the Funds in this case. The reports  
5 shall be organized so the Court can review the attorneys' fees incurred for various  
6 categories of work in the case and the attorneys who incurred them, and so the Court can  
7 review the expenses submitted for reimbursement. The first report shall be provided at the  
8 end of the second full week of May 2024 and shall cover through March 2024, with  
9 successive reports to be submitted at the end of the second full week of August, November,  
10 February, and May thereafter, continuing until the conclusion of this litigation and covering  
11 the preceding quarter.

12 Dated this 26th day of October, 2023.

13  
14 

15 \_\_\_\_\_  
16 David G. Campbell  
17 Senior United States District Judge  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

IN RE: Bard Implanted Port Catheter Products Liability Litigation	MDL No. 3081 (Applies to All Actions)
--	--

**EXHIBIT A TO CMO 4  
(Common-Benefit Participation Agreement)**

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_ 202\_\_,  
by and between the Plaintiffs’ Leadership Counsel (“PLC”) (consisting of Plaintiffs’ Co-  
Lead Counsel, Liaison Counsel, Plaintiffs’ Executive Committee (“PEC”), and Plaintiffs’  
Steering Committee (“PSC”)) appointed by the United States District Court for the District  
of Arizona in MDL 3081 and \_\_\_\_\_ [Name of the  
Firm Executing the Agreement] (“Participating Counsel”).

WHEREAS, the United States District Court District for the District of Arizona has  
appointed PLC to facilitate the conduct of pretrial proceedings in the federal actions  
relating to the use, marketing, and sales of Bard Implanted Port Catheters;

WHEREAS, PLC, in association with other attorneys working for the common  
benefit of Plaintiffs, have developed or are in the process of developing work product that  
will be valuable in all proceedings and benefit all Plaintiffs alleging injury caused by use  
of the Bard Implanted Port Catheters (“Common-Benefit Work Product”); and

WHEREAS, the Participating Counsel are desirous of acquiring the Common-  
Benefit Work Product and establishing an amicable working relationship with PLC for the  
mutual benefit of their clients;

1 NOW THEREFORE, in consideration of the covenants and promises contained  
2 herein, and intending to be legally bound hereby, the parties agree as follows:

3 **I. SCOPE OF AGREEMENT**

4 **A. Purpose**

5 This Common-Benefit Participation Agreement (“Participation Agreement”) is a  
6 private cooperative agreement between Plaintiffs’ attorneys to share Common-Benefit  
7 Work Product pursuant to the Case Management Order Establishing Common-Benefit Fee  
8 and Expense Funds (“Common-Benefit Order”) and this Participation Agreement. Any  
9 Plaintiffs’ attorney who executes this Agreement (“Participating Counsel”) is entitled to  
10 receive the Common-Benefit Work Product created by those attorneys who have also  
11 executed, or have been deemed to have executed, this Participation Agreement, regardless  
12 of the venue in which Participating Counsel’s cases are pending.

13 **B. Rights and Obligations of Participating Counsel**

14 Upon execution of this Participation Agreement, PLC will provide Participating  
15 Counsel access to the Common-Benefit Work Product, including access to the document  
16 depository and full access and availability of work product within the private, secure, and  
17 confidential Plaintiffs-only website. Participating Counsel agrees not to disclose  
18 Common-Benefit Work Product to Non-Participating Counsel. Participating Counsel  
19 agrees that all cases in which Participating Counsel has a fee interest, including filed,  
20 unfiled, and tolled cases, and/or claims filed in state and/or federal court, are subject to the  
21 terms of this Participation Agreement, regardless of whether this MDL is ongoing or  
22 closed. Participating Counsel shall produce a list that correctly sets forth the name of each  
23 client represented by Participating Counsel and/or in which Participating Counsel has an  
24 interest in the attorney fee, regardless of what that interest is, who has filed a civil action  
25 arising from the use, marketing, and/or sale of Bard Implanted Port Catheters. Such list  
26 shall include the court and docket number of each such case. Participating Counsel shall  
27 also produce a list that contains the name of each client represented by Participating  
28 Counsel and/or in which Participating Counsel has an interest in the attorney fee,

1 regardless of what that interest is, who has not yet filed a civil action but who has a claim  
2 against Defendants arising from the use, marketing, and/or sale of Bard Implanted Port  
3 Catheters. Participating Counsel shall supplement the lists on a quarterly basis and provide  
4 the lists to Plaintiffs' Co-Lead Counsel. The initial list shall be provided within 15 days  
5 of signing this Participation Agreement and must be supplemented every 90 days  
6 thereafter.

7 **II. AGREEMENT TO PAY AN ASSESSMENT ON GROSS RECOVERY**

8 Subject to the terms of this Participation Agreement and the terms of the Court's  
9 Common-Benefit Order, all Plaintiffs and their attorneys who agree to settle, compromise,  
10 dismiss, or reduce the amount of a claim, or, with or without trial, recover a judgment for  
11 monetary damages or other monetary relief, including compensatory and punitive  
12 damages, for any Bard Implanted Port Catheter claims are subject to an assessment of the  
13 Gross Monetary Recovery, as provided herein.

14 **A. Assessment Amount**

15 The assessment amount shall be ten (10) percent of the Gross Monetary Recovery  
16 in each case, with eight (8) percent for common-benefit attorneys' fees and two (2) percent  
17 for common-benefit expenses. This amount represents a "holdback." *See, e.g., In re*  
18 *Zyprexa Prods. Liab. Litig.*, 467 F.Supp.2d 256, 266-67 (E.D.N.Y. 2006). By entering this  
19 Participation Agreement, the undersigned understands and avers to not move, join, or  
20 otherwise support a motion that seeks a common-benefit fee assessment in excess of 8%,  
21 nor a motion that seeks common-benefit expenses in excess of 2%, unless it should  
22 become apparent that fees in excess of 8% or expenses in excess of 2% are required to  
23 reasonably and adequately advance the litigation.

24 To obtain the benefit of this assessment amount, all Plaintiffs' counsel with a case  
25 pending in this MDL or in any state court at the time of entry of the Common-Benefit  
26 Order shall execute this Participation Agreement within 30 days of the entry of the  
27 Common-Benefit Order. Any Plaintiffs' attorney who does not have a Bard Implanted  
28 Port Catheter case filed in any state or federal court at the time of entry of the Common-

1 Benefit Order shall execute this Participation Agreement (a) within 30 days of the date  
2 their first case is filed in or otherwise docketed in this Court via transfer or removal; or (b)  
3 within 30 days of the date their first case is filed in any state court, whichever occurs  
4 earlier. Failure to execute the Participation Agreement within these time frames may result  
5 in an increased assessment as determined by Plaintiffs' Co-Lead Counsel and subject to  
6 the Court's approval.

7 **B. Gross Monetary Recovery**

8 Gross Monetary Recovery includes any and all amounts paid to Plaintiffs (directly  
9 or through Plaintiffs' counsel) by Defendants pursuant to a settlement or judgment. In  
10 measuring the Gross Monetary Recovery, the parties are to (a) exclude court costs that are  
11 to be paid by Defendants; (b) include any payments to be made by Defendants on an  
12 intervention asserted by third-parties, such as to physicians, hospitals, or other healthcare  
13 providers in subrogation related to treatment of a Plaintiff, and any governmental liens or  
14 obligations (e.g., Medicare/Medicaid); and (c) include the present value of any fixed and  
15 certain payments to be made in the future.

16 **C. Covered Cases**

17 The assessment amount set forth above and in the related Common-Benefit Order  
18 shall apply to all cases now pending or later filed in, transferred to, or removed to this  
19 Court and treated as part of the coordinated proceeding known as *In re: Bard Implanted*  
20 *Port Catheter Products Liability Litigation*, MDL 3081, regardless of whether the  
21 Plaintiffs' attorney is Participating Counsel or not. Counsel who sign this Participation  
22 Agreement further agree that the assessment shall apply to all filed, unfiled, and tolled  
23 cases, and/or claims filed in state and/or federal court in which they have a fee interest,  
24 regardless of the size of that fee interest or whether this MDL is ongoing or closed.  
25 Counsel who do not sign the Participation Agreement are not entitled to receive Common-  
26 Benefit Work Product and may be subject to an increased assessment on all Bard  
27 Implanted Port Catheter cases in which they have a fee interest if they receive any  
28 Common-Benefit Work Product or otherwise benefit from the work product created by

1 PLC and other Participating Counsel working with the MDL. Non-Participating Counsel  
2 shall not be eligible to receive common-benefit payments for any work performed or  
3 expenses incurred.

4 **D. Attorney Fee Lien**

5 With respect to each client represented in connection with Bard Implanted Port  
6 Catheter claims that are filed, unfiled, and tolled cases, and/or claims filed in state and/or  
7 federal court, consistent with I.B. and I.C. of the Common-Benefit Order, each  
8 Participating Counsel shall agree to have Defendants deposit or cause to be deposited in  
9 the Bard IPC Fee Fund and Bard IPC Expense Fund established by the MDL Court (the  
10 “Funds”) a percentage of the gross amount recovered by each such client that is equal to  
11 the assessment amount. In the event Defendants do not deposit the assessed percentage  
12 into the Funds, Plaintiff and Plaintiff’s Participating Counsel shall deposit or cause to be  
13 deposited in the Funds a percentage of the gross amount recovered by each such client that  
14 is equal to the assessment amount. Participating Counsel, on behalf of themselves, their  
15 affiliated counsel, and their clients, hereby grant and convey to PLC a lien upon and/or a  
16 security interest in any fee generated as a result of any recovery by any client who they  
17 represent in connection with any Bard Implanted Port Catheter-induced injury and Bard  
18 Implanted Port Catheter marketing and sales practices, to the full extent permitted by law,  
19 in order to secure payment in accordance with the provisions of this Participation  
20 Agreement. Participating Counsel will undertake all actions and execute all documents  
21 that are reasonably necessary to effectuate and/or perfect this lien and/or security interest.

22 **E. Attorney-Client Contracts**

23 Both PLC and Participating Counsel recognize the importance of individual cases  
24 and the relationship between case-specific clients and their attorneys. Regardless of the  
25 type of settlement or conclusion eventually made in either state or federal cases, PLC will  
26 recommend to this Court that appropriate consideration be given to individual case  
27 contracts between attorneys and their clients.

28

1 **III. COMMON-BENEFIT EXPENSES**

2 **A. Qualified Expenses Eligible for Reimbursement**

3 To be eligible for reimbursement of common-benefit expenses, such expenses must  
4 be: (a) for the common benefit; (b) appropriately authorized<sup>1</sup> and timely submitted;  
5 (c) within the defined limitations set forth in this Participation Agreement and the  
6 Common-Benefit Order; and (d) verified by a partner or shareholder in the submitting law  
7 firm.

8 **B. Authorization and Submission**

9 To seek reimbursement of common-benefit expenses incurred on matters common  
10 to all claimants in MDL 3081 and authorized by Plaintiffs' Co-Lead Counsel, Participating  
11 Counsel must complete and send Exhibit B ("Monthly Expense Report") to the Common-  
12 Benefit Special Master on the 15th day of each month, beginning on November 15, 2023.  
13 Submissions must be e-mailed to [SMBIPC@ccadr.com](mailto:SMBIPC@ccadr.com). Each submission should contain  
14 expenses incurred during the calendar month prior to the submission date (i.e., the  
15 December 15, 2023 submission should include all expenses incurred during the month of  
16 November 2023). However, the first submission on November 15, 2023, should include  
17 all expenses incurred on matters common to all claimants through October 31, 2023.  
18 Untimely submission may result in a waiver of said expenses. Unsubstantiated expenses  
19 may be disallowed, as recommended by the Common-Benefit Special Master and/or  
20 Plaintiffs' Co-Lead Counsel.

21 **C. Verification**

22 Exhibit B shall be certified by a partner or shareholder in each firm, and such  
23 certification should attest to the accuracy of the submissions. Attorneys shall keep receipts  
24 for all expenses. Credit-card receipts are an appropriate form of verification if  
25 accompanied by a declaration from counsel that the expense was incurred and paid for the  
26 common benefit.

27 \_\_\_\_\_  
28 <sup>1</sup> For the purposes of this Participation Agreement, "authorized" or "approved" in terms  
of common-benefit expenses and common-benefit work shall mean authorized and  
approved by Plaintiffs' Co-Lead Counsel.



1 **IV. COMMON-BENEFIT WORK**

2 **A. Qualified Work Eligible for Reimbursement**

3 To be eligible for reimbursement, time expended must be: (a) for the common  
4 benefit; (b) appropriately authorized, per footnote 1 of this Participation Agreement, and  
5 timely submitted; (c) within the defined limitations set forth in this Participation  
6 Agreement and the Common-Benefit Order; and (d) verified by a partner or shareholder  
7 in the submitting law firm. Moreover, if counsel fails to timely submit capital contributions  
8 as may be requested by Plaintiffs' Co-Lead Counsel throughout this litigation, such  
9 counsel and members of counsel's firm shall not be allowed to submit common-benefit  
10 time or expenses for reimbursement. Unsubstantiated costs may be disallowed, as  
11 recommended by the Common-Benefit Special Master and/or Plaintiffs' Co-Lead  
12 Counsel.

13 **B. Counsel Involved**

14 Participating Counsel are prohibited from sharing Common-Benefit Work Product  
15 with Non-Participating Counsel. Counsel eligible to perform common-benefit work  
16 includes Plaintiffs' Co-Lead Counsel, members of the PEC and PSC, Co-Chairs and  
17 authorized members of MDL Committees, and other Participating Counsel subject to the  
18 written approval of Plaintiffs' Co-Lead Counsel.

19 **C. Authorization**

20 Time spent on matters common to all claimants in the MDL must be assigned by  
21 Plaintiffs' Co-Lead Counsel, directly or via authority specifically provided by Plaintiffs'  
22 Co-Lead Counsel to a Chair of a sanctioned committee to be eligible for consideration as  
23 common-benefit time. No time spent on developing or processing individual issues in any  
24 case for an individual client (claimant) will be considered or should be submitted; nor  
25 should time spent on unauthorized work be submitted for consideration.

26 **(1) Examples of Authorized and Unauthorized Work**

- 27 a. Depositions of corporate witnesses: Any attorney not  
28 designated as one of the authorized questioners or otherwise

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

authorized to attend a deposition on behalf of PLC shall not submit time or expenses for preparing for or attending such deposition, as such attendance is deemed to be on behalf of that attorney's individual clients.

b. Periodic PLC, MDL, or Full-Committee Conference Calls and Meetings: Such calls and meetings are held so that individual attorneys are kept up-to-date on the status of the litigation, therefore participation by listening to such calls is not common-benefit work. Each attorney has an obligation to stay informed about the litigation so that they can best represent their clients, and that is a reason to participate in such calls and meetings. The attorneys designated by Plaintiffs' Co-Lead Counsel to run those calls are working for the common benefit by keeping other lawyers informed and educated about the case, and their time will be considered common-benefit time. Nothing in this paragraph shall be construed to prevent members of PLC from submitting common-benefit time for participation in PLC communications that are germane to all members of PLC and are necessary to fulfill their PLC obligations.

c. Periodic Status Conferences: Periodic status conferences are held so that the litigation continues to move forward and legal issues are resolved with the Court. Individual attorneys are free to attend any status conference held in open court in order to keep up-to-date on the status of the litigation, but participation by attending and listening to such conferences is not common-benefit work. Each attorney has an obligation to stay informed about the litigation so that they can best

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

represent their clients. Mere attendance at a status conference, whether in-person or via remote means, will not be considered a common-benefit expense or common-benefit time. The attorneys designated by Plaintiffs’ Co-Lead Counsel to address issues that will be raised at a given status conference or requested by Plaintiffs’ Co-Lead Counsel to be present at a status conference are working for the common benefit, and their time will be considered common-benefit time.

d. Identification and Work-Up of Experts: Participating Counsel are encouraged to identify experts in consultation with the Chairs of the responsible subcommittees. If a Participating Counsel travels to and retains an expert without the knowledge and approval of Plaintiffs’ Co-Lead Counsel, the MDL may not need or use that expert, and the associated time and expense may not be considered common-benefit time or expenses, and therefore may not be compensable.

e. Attendance at Various Seminars: Attendance at a seminar that has an agenda item about the Bard Implanted Port Catheter MDL is not common-benefit work or a common-benefit expense.

f. Document Review: In the MDL, only document review specifically assigned to an attorney and authorized by Plaintiffs’ Co-Lead Counsel or one of the Chairs of a sanctioned committee will be considered common-benefit work. If an attorney elects to review documents that have not been assigned to that attorney by Plaintiffs’ Co-Lead Counsel or one of the committee Chairs, that review is not considered common-benefit work.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

g. Review of Pleadings and Orders: Each attorney has an obligation to stay informed about the litigation so that they can best represent their clients, and review of pleadings and orders is part of that obligation. Only those attorneys designated by Plaintiffs' Co-Lead Counsel to review and summarize those pleadings or orders for the MDL are working for the common benefit, and their time will be considered common-benefit time. All other counsel are reviewing those pleadings and orders for their own benefit and the benefit of their own clients, and the review is not considered common-benefit work. Nothing in this paragraph shall be construed to prevent members of PLC from submitting common-benefit time for reviewing orders that are germane to all members of the PLC and review of which is necessary to fulfill their PLC obligations.

h. Review of Discovery Requests and Responses: Each attorney has an obligation to stay informed about the litigation so that they can best represent their clients, and that is a reason to review discovery requests and responses served in this litigation. Only those attorneys designated by Plaintiffs' Co-Lead Counsel to review and summarize discovery requests and responses for the MDL are working for the common benefit, and their time will be considered common-benefit time. All other counsel are reviewing those discovery requests and responses for their own benefit and the benefit of their own clients, and the review is not considered common-benefit work.

1                   i.     Bellwether Trials: While the work-up of individual cases is  
2                   not considered common-benefit work, in the event that a case  
3                   is selected as part of an approved bellwether trial process in  
4                   the MDL or state-court proceeding, the time and expenses in  
5                   trying the case (including work performed as part of the  
6                   approved bellwether process) may be considered common-  
7                   benefit work at the discretion of Plaintiffs’ Co-Lead Counsel  
8                   to the extent it complies with the other provisions of the  
9                   Common-Benefit Order and this Participation Agreement.

10                   **D.     Time Keeping and Submission of Time Records**

11                   To seek reimbursement of common-benefit time incurred on matters common to  
12 all claimants in MDL 3081 and authorized by Plaintiffs’ Co-Lead Counsel, Participating  
13 Counsel must complete and send Exhibit C (“Monthly Time Report”) to the Common-  
14 Benefit Special Master on the 15th day of each month, beginning on November 15, 2023.  
15 Submissions must be e-mailed to [SMBIPC@ccadr.com](mailto:SMBIPC@ccadr.com). Each submission should contain  
16 all time incurred during the calendar month prior to the submission date (i.e., the  
17 December 15, 2023 submission should include all time incurred during the month of  
18 November 2023). However, the first submission on November 15, 2023, should include  
19 all time incurred on matters common to all claimants through October 31, 2023. Exhibit  
20 C shall be certified by a partner or shareholder in each firm, and such certification should  
21 attest to the accuracy of the submissions. Untimely submission may result in a waiver of  
22 said time. Time entries that are not sufficiently detailed may not be considered for  
23 common-benefit reimbursement, including but not limited to “block billing.” Submissions  
24 will be audited by Plaintiffs’ Co-Lead Counsel and/or the Common-Benefit Special  
25 Master.

26                   The following guidelines are intended for all activities performed and expenses  
27 incurred by Participating Counsel in MDL 3081:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1. All time and expense submissions must be incurred only for work authorized under this Participation Agreement.
2. All expense submissions must be made in the form of Exhibit B.
3. All time submissions must be made in the form of Exhibit C.
4. Exhibits B and C must be submitted on the 15th day of each month, beginning on November 15, 2023. Each submission should contain all time and expenses incurred during the calendar month prior to the submission date (i.e., the December 15, 2023 submission should include all time and expenses incurred during the month of November 2023), though the first submission on November 15, 2023, should include all time and expenses incurred through October 31, 2023. All time and expense submissions should be accompanied by contemporaneous records and verified by a partner or shareholder in the submitting firm. Submissions of time and expenses made after the 15th day of the month following the month in which the time or expenses were incurred may be rejected.
5. Participating Counsel’s time and expenses will be considered for common-benefit recovery commencing August 15, 2023, the date of the issuance of the Court’s Order scheduling an initial case management conference. If Participating Counsel performed work and incurred expenses prior to that date for the common benefit of all cases, Participating Counsel shall submit such time and expenses on November 15, 2023. Only time and expenses incurred for the common benefit of all cases, consistent with the terms of this Participation Agreement and the Common-Benefit Order, shall be considered for reimbursement.
6. All time and expense submissions must be e-mailed in the designated form of Exhibits B and C to [SMBIPC@ccadr.com](mailto:SMBIPC@ccadr.com) so that such

1 submissions can be reviewed, compiled, and submitted to the Court  
2 at the appropriate time.

3 7. Failure to provide submissions in a timely manner may result in a  
4 waiver of attorneys' fees and expenses claimed for the time period  
5 that is the subject of the submission. Failure to submit time and  
6 expense records in accordance with Exhibits B and C will result in  
7 a notice of deficiency, after which the submitting firm shall have 15  
8 days to cure the deficient submission. Absent prior approval from  
9 Plaintiffs' Co-Lead Counsel or special circumstances, failure to cure  
10 the deficiency within the 15-day period shall result in (a) that month's  
11 submission being rejected, and (b) the submitting firm waiving  
12 compensation for the time and expenses submitted that month. Upon  
13 a determination by Plaintiffs' Co-Lead Counsel and/or the Common-  
14 Benefit Special Master that a Participating Law Firm repeatedly fails  
15 to comply with the requirement to timely submit time and expense  
16 records in the required format, that Participating Law Firm may be  
17 barred from performing future common-benefit work.

18 8. Time spent compiling the data for the time and expense submissions  
19 is not considered common-benefit time and shall not be submitted.

20 **E. Distribution of Fees**

21 1. No Individual Right to the Funds: No party or attorney has any  
22 individual right to any common-benefit funds except to the extent  
23 directed by order of this Court. Common-benefit funds will not  
24 constitute the property of any party or attorney or be subject to  
25 garnishment or attachment for the debts of any party or attorney  
26 except when and as directed by Court order. These limitations do not  
27 preclude a party or attorney from transferring, assigning, or creating  
28 a security interest in potential disbursements from the fund if

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

permitted by applicable state laws and if subject to the conditions and contingencies of this Participation Agreement.

2. Court Approval: The amounts deposited in the Bard IPC Fee Fund and Bard IPC Expense Fund shall be available for distribution to attorneys who have performed professional services or incurred expenses for the common benefit. The MDL Court retains jurisdiction over any common-benefit award, regardless of whether the MDL is ongoing or closed. Each Participating Counsel who does common-benefit work has the right to present their claim(s) for compensation and reimbursement prior to any recommendation to the Court. It is expected that due consideration of payment of common-benefit fees and expenses will be given to the recommendation of Plaintiffs’ Co-Lead Counsel, after consultation with and recommendations of the Common-Benefit Special Master.

Dated: \_\_\_\_\_

\_\_\_\_\_  
/s/

Firm Name:  
Attorney Name:

PLAINTIFFS’ LEADERSHIP COUNSEL

\_\_\_\_\_  
/s/ *Adam M. Evans*

Adam M. Evans  
Plaintiffs’ Co-Lead Counsel

\_\_\_\_\_  
/s/ *Rebecca L. Phillips*

Rebecca L. Phillips  
Plaintiffs’ Co-Lead Counsel

\_\_\_\_\_  
/s/ *Michael A. Sacchet*

Michael A. Sacchet  
Plaintiffs’ Co-Lead Counsel





