



**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.

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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 authorized¹ 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. 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 ¹ For the purposes of this Participation Agreement, "authorized" or "approved" in terms
28 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

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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

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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.

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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. 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:

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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 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

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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