

FILED

DEC 17 2010

DAVID J. HARRIS, CLERK
[Signature]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION

CAROLYN JONES,)
)
 Plaintiff,)
)
 v.)
)
 C. R. BARD, INC. and COVIDIEN INC.)
 d/b/a SOFRADIM PRODUCTION,)
)
 Defendants.)
 _____)

CIVIL ACTION FILE

NO. 3:10CV120-M-A

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW Carolyn Jones as Plaintiff herein and hereby file this Complaint, showing the Court as follows:

PARTIES, JURISDICTION AND VENUE

1.

Plaintiff is a citizen of the State of Mississippi, and she resides in Tippah County, Mississippi.

2.

Defendant C. R. Bard, Inc. ("Bard") is a New Jersey corporation with its principal place of business at 730 Central Avenue, Murray Hill, New Jersey 07974. All Acts and omissions of Bard as described herein were done by its agents, servants, employees and/or owners, acting in the course and scope of their respective agencies, services, employments and/or ownership.

3.

Defendant Covidien Inc. d/b/a Sofradim Production ("Covidien") is a Delaware corporation with its principal places of business at 15 Hampshire Street, Mansfield, Massachusetts 02048. All acts and omissions of Covidien as described herein were done by its agents, servants, employees and/or owners, acting in the course and scope of their respective agencies, services, employments and/or ownership.

4.

Plaintiff is seeking damages in excess of \$75,000.00. Subject matter jurisdiction is proper pursuant to 28 U.S.C. § 1332.

5.

Bard Urological, the division of Defendant C.R. Bard, Inc. and Covidien, Inc. that designed, manufactured, marketed, packaged, labeled and sold the product at issue in this lawsuit, both conducted business and sold their products, is located in the Northern District of Mississippi.

6.

Bard and Covidien have significant contacts with the Northern District of Mississippi such that it is subject to personal jurisdiction within said district.

7.

A substantial part of the events and omissions giving rise to Plaintiff's causes of action occurred in the Northern District of Mississippi.

8.

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

FACTUAL BACKGROUND

9.

At all times relevant herein, Bard was engaged in the business of designing, manufacturing, marketing, packaging, labeling, and selling medical devices, including its Avaulta Synthetic Support System (the "Product"), specifically placing said product into the stream of commerce. Bard Inc. is a Jew Jersey based company who manufactures pelvic mesh systems, such as Avaulta Solo [™] Support System and the Avaulta Plus [™] Biosynthetic Support System. The product designed and manufactured by Bard and Covidien are mesh systems to correct and restore normal vaginal structure after a pelvic organ prolapsed.

10.

At all times relevant herein, Covidien was engaged in the business of designing, manufacturing, marketing, packaging, labeling, and selling medical devices, including its Avaulta Synthetic Support System (the "Product"), specifically placing said product into the stream of commerce. Bard Inc. is a Jew Jersey based company who manufactures pelvic mesh systems, such as Avaulta Solo [™] Support System and the Avaulta Plus [™] Biosynthetic Support System. The product designed and manufactured by Bard and Covidien are mesh systems to correct and restore normal vaginal structure after a pelvic organ prolapsed.

11.

Plaintiff was implanted with the Product during surgery performed by Dr. David Williams at Baptist Memorial Hospital in New Albany, Mississippi.

12.

The Product was surgically implanted in Plaintiff to treat her pelvic organ prolapsed, the use for which Bard and/or Covidien marketed the Product.

13.

As a result of having the Product implanted in her, Plaintiff has experienced significant mental and physical pain and suffering, has sustained permanent injury and permanent and substantial physical deformity, and has undergone or will undergo corrective surgery or surgeries. Specifically, Plaintiff has suffered bleeding, infections, intense pain, and surgery to adjust the defective device.

CAUSES OF ACTION

COUNT I: NEGLIGENCE

14.

Plaintiff incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

15.

Bard and/or Covidien had a duty to individuals, including Plaintiff, to use reasonable care in designing, manufacturing, marketing, labeling, packaging and selling the Product.

16.

Bard and/or Covidien was negligent in failing to use reasonable care in designing, manufacturing, marketing, labeling, packaging and selling the Product.

17.

As a direct and proximate result of Bard and/or Covidien's negligence, Plaintiff was caused and/or in the future will be caused to suffer severe personal

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

COUNT II: STRICT LIABILITY - DESIGN DEFECT

18.

Plaintiff incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

19.

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

20.

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

21.

Bard and/or Covidien is strictly liable to Plaintiff for designing, manufacturing, marketing, labeling, packaging and selling a defective product.

COUNT III: STRICT LIABILITY - MANUFACTURING DEFECT

22.

Plaintiff incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

23.

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

24.

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

25.

Bard and/or Covidien are strictly liable to Plaintiff for designing, manufacturing, marketing, labeling, packaging and selling a defective product.

COUNT IV: STRICT LIABILITY - FAILURE TO WARN

26.

Plaintiff incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

27.

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

28.

As a direct and proximate result of the Product's aforementioned defects, Plaintiff was caused and/or in the future will be caused to suffer severe personal injuries, pain and suffering, severe emotional distress, financial or economic loss,

including but not limited to obligations for medical services and expenses, present and future lost wages, and other damages.

29.

Bard and/or Covidien is strictly liable to Plaintiff for designing, manufacturing, marketing, labeling, packaging and selling a defective product.

COUNT V: BREACH OF EXPRESS WARRANTY

30.

Plaintiff incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

31.

Bard and/or Covidien made assurances to the general public, hospitals and health care professionals that the Product was safe and reasonably fit for its intended purposes.

32.

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

33.

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

34.

Bard and/or Covidien breached these express warranties in violation of Miss. Code Ann. § 75-2-313 because the Product implanted in Plaintiff was unreasonably dangerous and defective and not as Bard and/or Covidien had represented.

35.

Bard and/or Covidien's breach of its express warranties resulted in the implantation of an unreasonably dangerous and defective product in Plaintiff's body, placing Plaintiff's health and safety in jeopardy.

36.

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

COUNT VI: BREACH OF IMPLIED WARRANTY

37.

Plaintiff incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

38.

Bard and/or Covidien impliedly warranted that the Product was merchantable and was fit for the ordinary purposes for which it was intended.

39.

When the Product was implanted in Plaintiff to treat her pelvic organ prolapsed, the Product was being used for the ordinary purposes for which it was intended.

40.

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

41.

Bard and/or Covidien breached these implied warranties in violation of Miss. Code Ann. § 75-2-314 and § 75-2-315 of merchantability because the Product implanted in Plaintiff was neither merchantable nor suited for its intended uses as warranted.

42.

Bard and/or Covidien's breach of its implied warranties resulted in the implantation of an unreasonably dangerous and defective product in Plaintiff's body, placing Plaintiff's health and safety in jeopardy.

43.

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

COUNT VII: VIOLATION OF MISSISSIPPI CONSUMER PROTECTION LAWS

44.

Plaintiff incorporates by reference all other paragraphs in the Complaint as if fully set forth herein and further alleges the following.

45.

Plaintiff purchased and used the Product primarily for personal use and thereby suffered ascertainable losses as a result of Defendants' actions in violation of the consumer protection laws.

46.

Unfair methods of competition and unfair or deceptive acts or practices are defined and declared unlawful by the consumer protection laws.

47.

Defendants' specific unfair or deceptive acts or practices that were prescribed by law include the following, without limitation:

- (a) Representing that goods or services have...characteristics, ingredients, uses, benefits or quantities that they do not have...
- (b) Advertising goods or services with intent not to sell them as advertised;
and
- (c) Engaging in deceptive conduct.

48.

Defendants' violated consumer protection laws through their use of false and misleading misrepresentations or omissions of material fact relating to the safety and efficacy of said Product.

49.

Defendants' uniformly communicated the purported benefits of its Product while failing to disclose the serious and dangerous side effects related to the use of the Product and/or true state of the Product's regulatory status, its safety, its efficacy and/or its usefulness. Defendant made these representations to physicians and also to patients such as the Plaintiff, in their advertising campaigns.

50.

Defendants' conduct in connection with their sale of its Product as also impermissible and illegal in that it created an likelihood of confusion or misunderstanding, because Defendants' misleadingly, falsely and/or deceptively misrepresented and/or omitted numerous material facts regarding, among other things, the utility, benefits, costs, safety, efficacy and advantages of the Product.

51.

As a result of these violations of consumer protection law Miss. Code Ann. § 75-24-1, *et seq.*, Plaintiff has incurred serious physical injury, pain and suffering, loss of income, loss of opportunity and medical, hospital and surgical expenses and other expenses related to the diagnosis and treatment thereof, for which Defendants' are liable.

COUNT VII: PUNITIVE DAMAGES

52.

Plaintiff incorporates by reference all paragraphs of this Complaint as if fully set forth herein.

53.

Bard and/or Covidien knew or should have known that the Product was defective and presented an unreasonable risk of harm to Plaintiff.

54.

Bard and/or Covidien's conduct as described in this Complaint, for which Plaintiff is entitled to recover compensatory damages, manifested a conscious indifference to, and/or flagrant disregard of, the safety of those persons who might foreseeably have been harmed by the Product, including Plaintiff, justifying the imposition of punitive damages. Defendants' acted in a grossly negligent manner by failing to reveal and/or warn regarding the safety issues associated with its Product.

55.

WHEREFORE, Plaintiff demands a trial by jury, judgment against Bard and/or Covidien for compensatory and punitive damages in an amount exceeding \$75,000, as well as costs, attorney fees, interest, and any other relief, monetary or equitable, to which she is entitled.

PRAYER FOR RELIEF

56.

WHEREFORE, Plaintiff demands judgment against Defendants for the damages resulting from Plaintiff's injury including without limitation, Plaintiff's pecuniary injury, together with hospital and medical expenses, as well as compensatory damages, treble damages, punitive damages, attorneys' fees, interest and costs, and all such other relief as the Court deems just.

57.

Plaintiff prays that after all lawful delays had, there be judgment in the favor of Plaintiff for all general and special damages in an amount reasonable under these premises, including but not limited to compensatory damages, all mental and emotional pain, suffering, fear, and anguish, all expenses, and all losses, including but not limited to lost wages, proximately cause by defendant's conduct, together with prejudgment and post-judgment interest on the amounts awarded as and for compensatory damages.

58.

Plaintiff further prays for all allowable costs, for legal interest and damages from the date of judicial demand until paid, and for all such other and further relief as this Honorable Court shall deem necessary.


JURY TRIAL DEMAND

59.

Plaintiff hereby demands a trial by jury on all issues so triable.

DAVIS & CRUMP, P.C.
Attorneys for Plaintiff

By: _____


MARTIN D. CRUMP, Esquire/MS Bar 10652
MARK W. DAVIS, Esquire/MS Bar 5840
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Gulfport, MS 39501
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Facsimile: (228) 864-0907

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JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

MAND # 3:10CV120-M-A

I. (a) PLAINTIFFS

Carolyn Jones

DEFENDANTS

C. R. Bard, Inc. and Covidien, Inc. d/b/a Sofradim Production

(b) County of Residence of First Listed Plaintiff Tippah County
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Union County
(IN U.S. PLAINTIFF CASES ONLY)

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

(c) Attorney's (Firm Name, Address, and Telephone Number)

Davis & Crump, P.C. 228-863-6000
15th Place, 3rd Floor, 1712 15th Street, Gulfport, MS 39501

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input checked="" type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN

- (Place an "X" in One Box Only)
- 1 Original Proceeding
 - 2 Removed from State Court
 - 3 Remanded from Appellate Court
 - 4 Reinstated or Reopened
 - 5 Transferred from another district (specify)
 - 6 Multidistrict Litigation
 - 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Section 1332

Brief description of cause:
Product Liability Action

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ Undetermined CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 12/6/10 SIGNATURE OF ATTORNEY OF RECORD *[Signature]*

FOR OFFICE USE ONLY

RECEIPT # 3604 AMOUNT \$350.00 APPLYING IFP _____ JUDGE Mills MAG. JUDGE Alexander