

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

CHARLESTON DIVISION

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

MDL 2187

THIS DOCUMENT RELATES TO:

CAROLYN JONES,)	
)	
Plaintiff,)	
)	CIVIL ACTION FILE
v.)	
)	NO. 2:11-cv-00114
C. R. BARD, INC.,)	
)	
Defendant.)	
_____)	

MOTION FOR CONTINUANCE OF TRIAL

COMES NOW Carolyn Jones, Plaintiff in the above-captioned action, and hereby moves for an Order continuing this case from the Court’s January 10, 2014 trial calendar. Dr. Donald Ostergard, a crucial witness for the Plaintiff in the case, has notified counsel for Plaintiff that his wife has been urgently hospitalized in California and therefore he is unavailable to attend said trial. This is set forth in the Affidavits of Henry G. Garrard, III and James B. Matthews, III and attached hereto as Exhibit “A” and Exhibit “B”.

While the decision to grant a continuance is within the sound discretion of the trial court, a court should grant a continuance when the need for one is warranted. *See Gastaldi v. Sunvest Resort Cmty., LC*, 709 F. Supp. 2d 1284, 1291 (S.D. Fla. 2010). Courts consider a number of factors in determining whether a request for continuation is warranted. *See, e.g., Quiet Tech. DC-8, Inc. v. Hurel-Dubois UK Ltd.*, 326 F.3d 1333, 1350-51 (11th Cir. 2003). These include: (1) whether the party seeking the continuance was diligent in its efforts to ready its case prior to the

date set for the proceeding; (2) the likelihood that granting the continuance will address the stated need; (3) the extent to which the continuance would have inconvenienced the court and the opposing party; (4) the extent to which the moving party would be harmed by a denial of continuance; and (5) whether the court had previously granted a continuance in the case. *Id.* at 1351-52.

Plaintiff respectfully shows that these factors weigh strongly in favor of granting a continuance. Plaintiff and her counsel have been diligent in preparing this case for trial, and were present and ready for trial in Charleston, West Virginia when they received the urgent news from one of their primary witnesses in the case. A continuance will address the need for Dr. Ostergard to attend to his wife's emergent medical needs. While a continuance will inconvenience all parties and the court, who have prepared for this trial to begin in two days, Plaintiff submits that any inconvenience would be far outweighed by the insurmountable prejudice to the Plaintiff that would result if she were required to try this case without one of her most critical witnesses.

Counsel for Plaintiff has discussed the unfortunate circumstance involving Dr. Ostergard with counsel for C.R. Bard and C.R. Bard informs counsel for Plaintiff that it will not oppose the requested continuance. Counsel for Plaintiff has permission from counsel for C.R. Bard to so inform the Court.

Based thereon, and for good cause shown, Plaintiffs respectfully request that the Court enter an Order continuing the above-captioned civil action from the January 10, 2014 trial calendar.

This 8th day of January, 2014.

By: /s/ Henry G. Garrard, III
Henry G. Garrard, III
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Counsel for the Plaintiffs

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**IN RE: C. R. BARD, INC. PELVIC REPAIR
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MDL NO. 2187

THIS DOCUMENT RELATES TO ALL CASES

AFFIDAVIT OF HENRY G. GARRARD, III

Before the undersigned officer, duly authorized to administer oaths, personally appeared Henry G. Garrard, III, who, having been first duly sworn, states on his oath as follows:

1.

I am the lead counsel for my firm on all C.R. Bard mesh cases including Carolyn Jones, Civil Action No. 2:11-CV-00114. I am familiar with the witnesses and the evidence to be set forth in the Carolyn Jones case.

2.

This morning, Dr. Donald Ostergard, a urogynecologist from California, who is a crucial witness in the case to be presented by Ms. Jones, called and informed Jim Matthews, one of the attorneys in my office, that his wife had been urgently hospitalized last night and would remain hospitalized at least 5 days. Further, assuming his wife is released in 5 days, he would need to help with her care at home and therefore would not be available to come to West Virginia in the next 2 weeks, and was unsure when he would be available to come. I have attached an affidavit from Jim Matthews recounting that conversation.

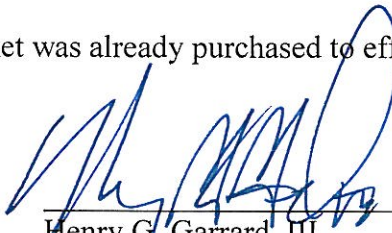
EX. A

3.

Dr. Ostergard is a crucial witness in the case and is the witness necessary for the plaintiffs to carry their burden of proof on causation and design defects. I am familiar with the discovery deposition taken by C.R. Bard of Dr. Ostergard in this case. The discovery deposition, if played or read to a jury, will not allow the plaintiff to carry her burden of proof.

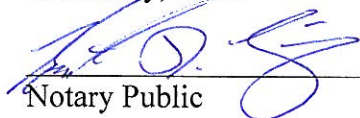
4.

As a consequence of this unfortunate development with Dr. Ostergard's wife, we are compelled to request the court to grant a continuance. Dr. Ostergard had been scheduled to fly to West Virginia on Sunday, January 12th and a ticket was already purchased to effectuate that.

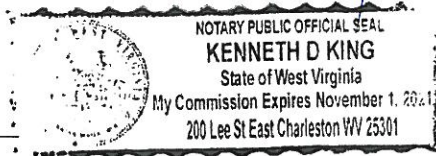


Henry G. Garrard, III

Sworn to and subscribed
before me this 8 day
of January, 2014.



Notary Public



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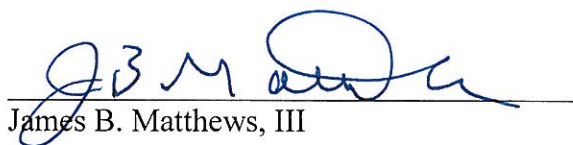
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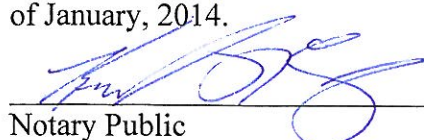
AFFIDAVIT OF JAMES B. MATTHEWS, III

Before the undersigned officer, duly authorized to administer oaths, personally appeared James B. Matthews, III, who, having been first duly sworn, states on his oath as follows:

On January 8, 2014 at 8:28 a.m. (E.S.T.) (5:28 a.m. P.S.T.) I received a phone call from Dr. Donald Ostergard informing me that his wife had been hospitalized overnight with a severe medication reaction related to her illness and that she would be hospitalized for at least 5 days. Dr. Ostergard's wife suffers from a serious chronic illness. Dr. Ostergard also said that assuming his wife is released in 5 days, he would need to help with her care at home and therefore would not be available to come to West Virginia in the next 2 weeks, and was unsure when he would be available to come. He was apologetic and upset but explained that his wife and her health had to be his top priority at this time.


James B. Matthews, III

Sworn to and subscribed
before me this 8 day
of January, 2014.


Notary Public



EX. B

CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2014, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the CM/ECF participants registered to receive service in this action.

By: /s/ Henry G. Garrard, III
Henry G. Garrard, III
hgg@bbgbalaw.com
Georgia Bar No. 286300

Blasingame, Burch, Garrard & Ashley, P.C.
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ORDER

Upon consideration of the Plaintiff's Motion for Continuance of Trial, and for good cause shown, the Court hereby grants the Plaintiff's Motion and orders that this case be removed from the January 10, 2014 trial calendar, to be rescheduled for a date to be determined.

This ____ day of January, 2014.

Honorable Joseph R. Goodwin
United States District Judge