IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.: _____

MSPA CLAIMS 1, LLC, a Florida limited liability company, MSP RECOVERY, LLC, a Florida entity, MAO-MSO RECOVERY II, LLC, a Delaware entity, and MSP RECOVERY SERIES, LLC, a Delaware entity,

Plaintiffs,

v.

C. R. BARD, INC., a corporation, SOFRADIM PRODUCTION, SAS, a foreign corporation, TISSUE SCIENCE LABORATORIES, a foreign corporation, and GARRETSON RESOLUTION GROUP, a foreign corporation,

Defendants.
_____/

Removed From:

Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida

Case No.: 2018-026469-CA-01

DEFENDANT C. R. BARD, INC.'S NOTICE OF REMOVAL

Defendant C. R. Bard, Inc. ("Bard") hereby removes the state court action described below to this Court pursuant to 28 U.S.C. §§ 1331, 1367, 1441, 1446, and states as follows:

BACKGROUND

1. On August 3, 2018, Plaintiffs MSP Claims 1, LLC, MSP Recovery, LLC, MAO-MSO Recovery II, LLC, and MSP Recovery Series, LLC (collectively, "Plaintiffs") filed a putative class action complaint against Defendants C. R. Bard, Inc. ("Bard"), Sofradim Production, SAS ("Sofradim"), Tissue Science Laboratories ("TSL"), and Garretson Resolution Group ("Garretson") in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, styled as *MSPA Claims 1, LLC, et al v. C. R. Bard, Inc., et al.*, Case No. 2018-026469-

CA-01 (the "Complaint").

2. Bard was served with a copy of the Complaint and summons on November 1, 2018. Upon information and belief, Garretson was served with a copy of the Complaint and summons on November 1, 2018, and Sofradim and TSL have not yet been served as of the date of filing this Notice of Removal.

3. True copies of all process, pleadings, and orders served upon Bard in the state court action are attached hereto as **Exhibit A**, pursuant to 28 U.S.C. § 1446(a).

4. As required by 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal is being served upon Plaintiffs. A copy of that notice (without exhibits) is attached hereto as **Exhibit B**. The original notice, with exhibits, is being filed contemporaneously with the Clerk of the Circuit Court for the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. *Id*.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1446(a) because this action is being removed from the state court in which it was originally filed, the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. That court sits within the Southern District of Florida.

6. In the Complaint, Plaintiffs are seeking reimbursement, on a class-wide basis, for medical payments that Plaintiffs' assignors allegedly made on behalf of Medicare Advantage plan enrollees who suffered injuries due to the implantation of pelvic mesh repair devices, which Defendants purportedly "designed, manufactured, marketed, or distributed, sold and/or supplied." (Compl. at pp.2, 5 & ¶ 77). Plaintiffs allege that Defendants are "primary payers" responsible for reimbursement, pursuant to the Medicare Secondary Payer Act (the "MSP Act"), because they entered into "a settlement agreement" in which Defendants "agreed to settle pending litigation related to" pelvic mesh repair devices. (Compl. ¶¶ 79-82, 101-04). Plaintiffs allege that

Defendants failed to properly reimburse them from the "Settlement Funds." (Compl. ¶¶ 84-87. Plaintiffs assert a cause of action against Defendants, labeled "Private Cause of Action for Double Damages (Under 42 U.S.C. § 1395y(b)(3)(A))" of the MSP Act, seeking reimbursement for medical expenses (Counts I), and a cause of action against Garretson alone for breach of fiduciary duty based on Garretson's alleged failure to identify and resolve reimbursement claims (Count II). (Compl. ¶¶ 97-114).[1]

7. This Notice of Removal is timely filed under 28 U.S.C. § 1446(b)(1), as the matter has been removed less than thirty (30) days from the date Bard was served with a copy of the Complaint and summons.

8. Counsel for Bard has conferred with counsel for Garretson and is authorized to represent that Garretson consents to the removal of this state court action to this Court and will file a formal notice of consent to removal.

9. Because, as of the date of filing this Notice of Removal, neither Sofradim nor TSL has been served with process, a summons, or a copy of the Complaint, Bard is not required to obtain the consent of Sofradim and TSL before removing the state court action to this Court. *See* 28 U.S.C. § 1446(b)(2) ("When a civil action is removed solely under Section 1441(a), all defendants *who have been properly joined and served* must join in or consent to the removal of the action." (emphasis added)); *see also Johnson v. Wellborn*, 418 F. App'x 809, 815 (11th Cir. 2011) ("The requirement that there be unanimity of consent in removal cases with multiple defendants does not require consent of defendants who have not been properly served."); *Bailey v. Janssen Pharmaceutica, Inc.*, 536 F.3d 1202, 1208 (11th Cir. 2008) ("[A] defendant has no

[1] The above-captioned action is related to another action brought by Plaintiffs or their affiliates against Bard that already is pending before this Court, *MSP Recovery Claims, Series LLC, et al. v. C. R. Bard, Inc.*, No.1:18-cv-24511-KMW (S.D. Fla. removed Oct. 29, 2018).

obligation to participate in any removal procedure prior to his receipt of formal service of judicial process.").

BASIS FOR REMOVAL – FEDERAL QUESTION

10. This Court has original jurisdiction under 28 U.S.C. § 1331. District courts have original jurisdiction over all "civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. "A suit arises under the law that creates the cause of action." *American Well Works Co. v. Layne & Bowler Co.*, 241 U.S. 257, 260 (1916).

11. 28 U.S.C. § 1441(a) provides that "any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending."

12. Count I of the Complaint contains a cause of action labeled "Private Cause of Action for Double Damages Under 42 U.S.C. § 1395y(b)(3)(A)." Federal law created the purported cause of action and rights that Plaintiffs assert in Count I, and Plaintiffs' purported right to relief necessarily depends on the resolution of substantial questions of federal law. *See MSP Recovery, LLC v. Progressive Select Ins. Co.*, 96 F. Supp. 3d 1356, 1358 (S.D. Fla. 2015) (finding that court has federal question subject matter jurisdiction over cause of action brought by Medicare Advantage Organization seeking reimbursement for conditional payments under 42 U.S.C. § 1395y(b)(3)(A)). Accordingly, this Court has original, federal-question jurisdiction over Count I of the Complaint.

13. Supplemental jurisdiction over a state law claim exists when the state law claim is "so related to claims in the action within such original jurisdiction that they form part of the same case or controversy." 28 U.S.C. § 1367(a). Federal law and state law claims form part of the

"same case or controversy" where they "'derive from a common nucleus of operative fact' and are 'such that [a plaintiff] would ordinarily be expected to try them all in one judicial proceeding.'" *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 349 (1988) (quoting *United Mine Workers v. Gibbs*, 383 U.S. 715, 725 (1966) (alteration in original)); *accord Parker v. Scrap Metal Processors, Inc.*, 468 F.3d 733, 743 (11th Cir. 2006) ("The constitutional 'case or controversy' standard confers supplemental jurisdiction over all state claims which arise out of a common nucleus of operative fact with a substantial federal claim.").

14. Count II of the Complaint alleges a claim against Garrteson for breach of fiduciary duty based on Garretson's purported failure to identify and resolve the same federal law reimbursement claim that Plaintiffs pursue in Count I, and both claims purportedly arise from the same settlement agreement. Accordingly, Counts I and II derive from a common nucleus of operative fact and "form a part of the same case or controversy," vesting this Court with supplemental jurisdiction over Count II pursuant to 28 U.S.C. § 1367(a). *See Inetianbor v. CashCall, Inc.*, 923 F. Supp. 2d 1358, 1361 (S.D. Fla. 2013) (defendant's removal pursuant to 42 U.S.C. § 1441(a) deemed permissible where court had original jurisdiction over federal law claim and "supplementary jurisdiction" over state law claims pursuant to 28 U.S.C. § 1367, because state-law claims arose "out of the same nucleus of operative facts as the [federal-law] claim"); *see also MSP Recovery, LLC v. Allstate Ins. Co.*, 835 F.3d 1351, 1362 (11th Cir. 2016) ("[W]here there is a basis for federal jurisdiction, the district court must exercise its supplemental jurisdiction over related state law claims unless a statutory exception applies.").[2]

15. Based on the foregoing, the Court must entertain this entire action.

16. Bard appears for the purpose of removal only, and for no other purpose, and

[2] No statutory exception applies here. *See* 28 U.S.C. § 1367(c).

reserves all rights and defenses available to it, including the right to amend or supplement this Notice of Removal.

WHEREFORE, Bard gives notices that the state court action, pending in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, is removed to this Court.

Respectfully submitted,

GREENBERG TRAURIG, P.A.
333 Avenue of the Americas,
Suite 4400
Miami, Florida 33131
Telephone: (305) 579-0500
Facsimile: (305) 579-0717
Email: Gallos@gtlaw.com
Yagodaj@gtlaw.com
Montelh@gtlaw.com
FLservice@gtlaw.com

/s/ Sabrina Gallo
SABRINA GALLO
Florida Bar No. 419273
JAY A. Yagoda
Florida Bar No. 84811

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2018, I electronically filed the foregoing with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on the counsel of record via electronic mail and U.S. first class mail to: Gustavo J. Losa, MSP Recovery Law Firm, 5000 S.W. 75th Avenue, Suite 300, Miami, Florida 33155 [serve@msprecovery.com; glosa@msprecovery.com].

/s/ Sabrina Gallo
SABRINA GALLO

JS 44 (Rev. 06/17) FLSD Revised 06/01/2017

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 NEXT PAGE OF THIS FORM.)* **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

I. (a) PLAINTIFFS MSPA Claims 1, LLC; MSP Recovery, LLC; MAO-MSO Recovery II, LLC; MSP Recovery Series, LLC

DEFENDANTS C. R. Bard, Inc; Sofradim Production, SAS; Tissue Science Laboratories; Garretson Resolution Group

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

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

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Gustavo J. Losa; MSP Recovery Law Firm; 5000 SW 75th Ave. Ste. 300, Miami, FL 33155; 305-614-2222

Attorneys *(If Known)*
(For C. R. Bard, Inc. ONLY) Sabrina R. Gallo; Greenberg Traurig, P.A., 333 SE 2nd Ave. St. 4400, Miami, FL 33131; 305-579-0500

(d) Check County Where Action Arose: ☑ MIAMI- DADE ☐ MONROE ☐ BROWARD ☐ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☐ OKEECHOBEE ☐ HIGHLANDS

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

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

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

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

Click here for: Nature of Suit Code Descriptions

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☒ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Med. Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence

Other:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee – Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent – Abbreviated New Drug Application
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729 (a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☐ 1 Original Proceeding ☑ 2 Removed from State Court ☐ 3 Re-filed **(See VI below)** ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district *(specify)* ☐ 6 Multidistrict Litigation Transfer ☐ 7 Appeal to District Judge from Magistrate Judgment ☐ 8 Multidistrict Litigation – Direct File ☐ 9 Remanded from Appellate Court

VI. RELATED/ RE-FILED CASE(S)

(See instructions): a) Re-filed Case ☐ YES ☑ NO b) Related Cases ☑ YES ☐ NO

JUDGE: Kathleen M. Williams **DOCKET NUMBER:** 1:18-cv-24511-KMW

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause ***(Do not cite jurisdictional statutes unless diversity)***:
42 U.S.C. § 1395y(b)(3)(A) - private cause of action under Medicare Secondary Payer Act

LENGTH OF TRIAL via 10 days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

☑ CHECK IF THIS IS A **CLASS ACTION** UNDER F.R.C.P. 23

DEMAND $

CHECK YES only if demanded in complaint:

JURY DEMAND: ☑ Yes ☐ No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE November 19, 2018

SIGNATURE OF ATTORNEY OF RECORD
/s/ Sabrina R. Gallo

FOR OFFICE USE ONLY

RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

JS 44 (Rev. 06/17) FLSD Revised 06/01/2017

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked. Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

VI. Related/Refiled Cases. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity**. Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VIII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

Date and Attorney Signature. Date and sign the civil cover sheet.

Exhibit A

CT Corporation

Service of Process Transmittal
11/01/2018
CT Log Number 534338177

TO: Sabina Downing
C. R. Bard, Inc.
730 Central Ave
Murray Hill, NJ 07974-1199

RE: **Process Served in Florida**

FOR: C. R. Bard, Inc. (Domestic State: NJ)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:	MSPA Claims 1, LLC, etc., et al., Pltfs. vs. C.R. Bard, Inc., etc., et al., Dfts.
DOCUMENT(S) SERVED:	Summons, Class Action
COURT/AGENCY:	Miami-Dade County Circuit Court, FL Case # 2018026469CA01
NATURE OF ACTION:	Plaintiffs Direct Right of Subrogation and their Assignments
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Plantation, FL
DATE AND HOUR OF SERVICE:	By Process Server on 11/01/2018 at 10:41
JURISDICTION SERVED :	Florida
APPEARANCE OR ANSWER DUE:	Within 20 days
ATTORNEY(S) / SENDER(S):	Gustavo J. Losa MSP Recovery Law Firm 5000 S.W. 75th Avenue, Suite 300 Miami, FL 33155 305-614-2239
ACTION ITEMS:	SOP Papers with Transmittal, via UPS Next Day Air , 1ZX212780100064434 Image SOP Email Notification, Sabina Downing Sabina.Downing@crbard.com Email Notification, Greg Dadika Greg.dadika@crbard.com Email Notification, Elizabeth Yodice Elizabeth.yodice@crbard.com Email Notification, Candace Camarata candace.camarata@crbard.com Email Notification, Marianne Stober Marianne_S_Stober@BD.COM Email Notification, Robert Manspeizer Robert_Manspeizer@bd.com
SIGNED:	C T Corporation System
ADDRESS:	1200 South Pine Island Road Plantation, FL 33324
TELEPHONE:	954-473-5503

☒ IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA.
☐ IN THE COUNTY COURT IN AND FOR MIAMI-DADE COUNTY, FLORIDA.

DIVISION	SUMMONS 20 DAY CORPORATE SERVICE (a) GENERAL FORMS	CASE NUMBER
☒ CIVIL ☐ OTHER ☐ DISTRICTS		2018-026469-CA-01

PLAINTIFF(S)	VS. DEFENDANT(S)	SERVICE
MSPA CLAIMS 1, LLC, a Florida limited liability company, MSP Recovery, LLC, a Florida entity, MAO-MSO Recovery II, LLC a Delaware entity and MSP RECOVERY SERIES, LLC, a Delaware Entity	C.R. Bard, Inc., a corporation, SOFRADIM PRODUCTION, SAS, a foreign corporation, TISSUE SCIENCE LABORATORIES, a foreign corporation, and GARRETSON RESOLUTION GROUP, a foreign corporation	10:35 | 11/1/18 | 12:16 | BH

THE STATE OF FLORIDA:

To Each Sheriff of the State:

YOU ARE COMMANDED to serve this summons and copy of the complaint or petition in this action on defendant(s): C.R. BARD, INC.

CT CORPORATION SYSTEM as Registered Agent

1200 S. PINE ISLAND RD.

PLANTATION, FL 33324

CLOCK IN

Each defendant is required to serve written defense to the complaint or petition on Plaintiff's Attorney: Gustavo J. Losa

whose address is: MSP Recovery Law Firm

5000 SW 75 Ave, Suite 400

Miami, FL 33155

within 20 days " **Except when suit is brought pursuant to s. 768.28, Florida Statutes, if the State of Florida, one of its agencies, or one of its officials or employees sued in his or her official capacity is a defendant, the time to respond shall be 40 days. When suit is brought pursuant to. 768.28, Florida Statutes, the time to respond shall be 30 days."** after service of this summons on that defendant , exclusive of the day of service, and to file the original of the defenses with the Clerk of this Clerk Court either before service on Plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

HARVEY RUVIN CLERK of COURTS	DEPUTY CLERK	DATE
		OCT 31 2018

AMERICANS WITH DISABILITIES ACT OF 1990
ADA NOTICE

"If you are a person with a disability who needs any accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the Eleventh Judicial Circuit Court's ADA Coordinator, Lawson E. Thomas Courthouse Center, 175 NW 1st Ave., Suite 2702, Miami, FL 33128, Telephone (305) 349-7175; TDD (305) 349-7174, Fax (305) 349-7355 at least 7 days before your scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711."

Filing # 75983941 E-Filed 08/03/2018 11:22:41 PM

IN THE CICRUIT COURT OF THE ELEVENTH JUDCIAL CIRCUIT IN AND OFR MIAMI-DADE COUNTY, FLORIDA

CASE NO.:

MSPA CLAIMS 1, LLC, a Florida limited liability company, MSP Recovery, LLC, a Florida entity, MAO-MSO Recovery II, LLC, a Delaware entity and MSP RECOVERY SERIES, LLC, a Delaware Entity.

Plaintiffs,

vs.

C.R. BARD, INC, a corporation, SOFRADIM PRODUCTION, SAS, a foreign corporation, TISSUE SCIENCE LABORATORIES, a foreign corporation, and GARRETSON RESOLUTION GROUP, a foreign corporation.

Defendants.

_____/

CLASS ACTION

Plaintiffs, MSPA Claims 1, LLC, a Florida entity, MSP Recovery, LLC, a Florida entity, and MAO-MSO Recovery II, LLC, a Delaware entity and MSP Recovery Claims Series, LLC, a Delaware Entity (collectively "Plaintiffs, hereby bring this action against Defendants, C.R. Bard, Inc. ("Bard"), Sofradim Production, SAS ("Sofradim"), Tissue Science Laboratories ("TSL") and Garretson Resolution Group (collectively "Defendants") and state as follows:

NATURE OF THE ACTION

Plaintiffs, as assignees of Health Maintenance Organizations ("HMOs"), Management Service Organizations ("MSOs"), Independent Physician Associations ("IPAs"), Medicare Advantage ("MA") Plans and other similarly-situated entities (collectively referred to as "MAOs" or "Class Members"), sue Defendants to enforce recovery, subrogation, and reimbursement rights for medical expense payments made by Plaintiffs' assignors and Class Members as secondary payers.

As secondary payers,[1] Plaintiffs seek to recover from Defendants, as primary plans,[2] or entities that received payment from a primary plan, reimbursement of all sums that Plaintiffs' assignors and Class Members were billed, for medical care and treatment rendered on behalf of MA enrollees, for which Defendants are responsible as primary payers (or as entities that received payment from a primary payer), on a fee-for-service basis; and double damages for Defendants' failure to properly reimburse Plaintiffs' assignors and Class Members.

Plaintiffs seek reimbursement for its assignors' secondary payments of the medical expenses of treating injuries their enrollees suffered as a direct result of implanting Pelvic mesh repair devices (the "medical expenses"), manufactured, marketed, or distributed by Defendants.

Defendants, were negligent in the manner in which they designed, developed, manufactured, tested, promoted, labeled, distributed and sold pelvic repair devices ("Products"). Defendants concealed and continue to conceal the Products' dangerous side effects.

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[1] A secondary payment, in the context of Medicare benefits, means a payment for medical coverage benefits that are payable only to the extent that payment has not been made and cannot reasonably be expected to be made by other coverage that is primary.

[2] Primary plans, in the context of Medicare as a secondary payer, include workers' compensation plans, group health plans, liability insurance policies or plans (including self-insured plans ***or tortfeasors such as Defendants***), and no-fault insurance. 42 U.S.C. § 1395y(b)(2)(A)(ii).

The defective products are as follows:

a. The Align Urethral Support System;

b. The Align TO Urethral Support System;

c. The Avaulta Anterior BioSynthetic Support System;

d. The Avaulta Posterior BioSynthetic Support System;

e. The Avaulta Plus Anterior BioSynthetic Support System;

f. The Avaulta Plus Posterior BioSynthetic Support System;

g. The Avaulta Solo Anterior Synthetic Support System;

h. The Avaulta Solo Posterior Synthetic Support System;

i. The InnerLace BioUrethral Support System;

j. The Pelvicol Acellular Collagen Matrix;

k. The PelviLace BioUrethral Support System;

l. The PelviLace TO Trans-obturator BioUrethral Support System;

m. The PelviSoft Acellular Collagen BioMesh;

n. The Pelvitex Polypropylene Mesh;

o. The Uretex SUP Pubourethral Sling;

p. The Uretex TO Trans-obturator Urethral Support System;

q. The Uretex TO2 Trans-obturator Urethral Support System; and

r. The Uretex TO3 Trans-obturator Urethral Support System.

Bard designed, manufactured, packaged, labeled, marketed, sold, and distributed the Align and Align TO Urethral Support Systems, including that which was implanted in any Plaintiffs' Enrollees.

Sofradim designed, manufactured, packaged and labeled the Avaulta Anterior and Posterior BioSynthetic Support Systems, including that which was implanted in any of Plaintiffs' Enrollees. Bard marketed, sold, and distributed the Avaulta Anterior and Posterior BioSynthetic Support Systems, including that which was implanted in any Plaintiffs' Enrollees.

Bard designed, manufactured, packaged, labeled, marketed, sold, and distributed the Avaulta Plus Anterior and Posterior BioSynthetic Support Systems, including that which was implanted in any Plaintiffs Enrollees.

Bard designed, manufactured, packaged, labeled, marketed, sold, and distributed the Avaulta Solo Anterior and Posterior BioSynthetic Support Systems, including that which was implanted in any Plaintiffs' Enrollees.

TSL designed, manufactured, packaged and labeled the InnerLace BioUrethral Support System, including that which was implanted in any Plaintiffs' Enrollees.

Bard marketed, sold, and distributed the InnerLace BioUrethral Support System, including that which was implanted in any Plaintiffs' Enrollees.

TSL designed, manufactured, packaged and labeled the Pelvicol Acellular Collagen Matrix, including that which was implanted in any of Plaintiffs' Enrollees. Bard marketed, sold, and distributed the Pelvicol Acellular Collagen Matrix, including that which was implanted in any Plaintiff's Enrollees.

TSL designed, manufactured, packaged and labeled the PelviLace and PelviLace TO Trans-obturator BioUrethral Support Systems, including that which was implanted in any Plaintiffs' Enrollees. Bard marketed, sold, and distributed the PelviLace and PelviLace TO Trans-obturator BioUrethral Support Systems, including that which was implanted in any Plaintiffs' Enrollees.

TSL designed, manufactured, packaged and labeled the PelviSoft Acellular Collagen BioMesh, including that which was implanted in any Plaintiffs' Enrollees. Bard marketed, sold, and distributed the PelviSoft Acellular Collagen BioMesh, including that which was implanted in any Plaintiffs' Enrollees.

Sofradim designed, manufactured, packaged and labeled the Pelvitex Polypropylene Mesh, including that which was implanted in any Plaintiffs' Enrollees. Bard marketed, sold and distributed the Pelvitex Polypropylene Mesh, including that which was implanted in any Plaintiffs' Enrollees.

Sofradim designed, manufactured, packaged and labeled the Uretex SUP Pubourethral Sling, and Uretex TO, TO2, and TO3 Trans-obturator Urethral Support Systems, including that which was implanted in any Plaintiffs' Enrollees. Bard marketed, sold and distributed the Uretex SUP Pubourethral Sling, and Uretex TO, TO2, and TO3 Trans- obturator Urethral Support Systems, including that which was implanted in any Plaintiffs' Enrollees.

Plaintiffs' claims arise from Defendants' failure and refusal to reimburse Plaintiffs for the medical expenses, for which Defendants are the responsible entities. Plaintiffs seek reimbursement for the payment of medical care resulting from injuries cause by Defendants' actions.

Plaintiffs' MAO assignors contracted with the Centers for Medicare and Medicaid Services ("CMS") to administer Medicare benefits for Medicare beneficiaries that elected to receive benefits from MA Plans under Medicare Part C. Plaintiffs' recovery rights arise from payments the MAO-assignors made, as secondary payers, for which Defendants are primarily responsible because of their tortious actions.

JURISDICTION, PARTIES AND VENUE

1. This is an action for damages, which in the aggregate, exceeds seventy-five thousand dollars ($75,000.00).

2. MAO-MSO Recovery II, LLC, is a Delaware entity, with its principal place of business located at 45 Legion Drive, Cresskill, New Jersey 07626. MAO-MSO Recovery II, LLC, is a citizen of the State of Delaware and is not a citizen of the home state of any of the Defendants.

3. MSP Recovery, LLC, is a Florida entity, with its principal place of business located at 5000 SW 75th Avenue, Suite 400, Miami, Florida 33155. MSP Recovery, LLC, is a citizen of the State of Florida and is not a citizen of the home state of any of the Defendants.

4. MSP Recovery Claims Series, LLC, a Delaware Series, Limited Liability Company, with its principle place of business located at 5000 S.W. 75th Avenue, Suite 400, Miami, Florida 33155. MSP Recovery Claims Series, LLC is a citizen of the State of Delaware and is not a citizen of the home state of any of the Defendants.

5. Plaintiff MSPA Claims 1, LLC, is a Florida entity, with its principal place of business located at 5000 S.W. 75th Avenue, Suite 400, Miami, Florida 33155. MSPA Claims 1, LLC, is a citizen of the State of Florida and is not a citizen of the home state of any of the Defendants.

6. Bard is a New Jersey corporation with its principal place of business in New Jersey. 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.

7. Sofradim is a French company with its principal place of business at 116 Avenue Du Formans, Trevoux, France 01600. All acts and omissions of Sofradim 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.

8. TSL is a British private limited company with its principal place of business in the United Kingdom. All acts and omissions of TSL 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.

9. Defendant, Garretson Resolution Group, is a foreign corporation organized under the laws of the State of Delaware with its principal place of business in 6281 Tri-Ridge Boulevard, Suite 300, Cincinnati, Ohio 45140. GRG is authorized to conduct business in the State of Florida and maintains agents to transact its customary business in Florida. Defendant, GRG designated CT Corporation System, 400 Easton Commons Way, Suite 125, Columbus, Ohio 43219 as registered agent for service in the State of Ohio.

10. At all material times herein, the Class Members (or their assignors) contracted with CMS to administer Medicare benefits for Medicare beneficiaries who elect to enroll in MA Plans under Medicare Part C.

11. Venue is proper, as the cause of action accrued in Miami-Dade County, Florida. § 47.051, Fla. Stat. (2016).

12. All conditions precedent to this action occurred, were performed, waived or excused.

BACKGROUND

A. The Medicare Act

13. The federal Medicare program began with the 1965 enactment of Title XVIII of the Social Security Act (42 U.S.C. §§ 1395, *et seq.* (the "Medicare Act")) and is a system of federally-funded health insurance plans that pays medical treatment costs for individuals over 65 years of age, certain disabled persons, and persons with End Stage Renal Disease. *See* 42 C.F.R. § 408.10, *et seq.* (2006). Medicare is a complex federal program that insured over 53 million Americans in 2014 with total expenditures of $613.3 billion.[3]

14. Today, Medicare benefits are divided into four parts:

(1) Medicare Part A, 42 U.S.C. § 1395c, *et seq.*, provides coverage for costs of inpatient hospital services and is available without payment of premiums to most persons who paid Medicare payroll taxes prior to becoming Medicare-eligible;

(2) Medicare Part B, 42 U.S.C. § 1395j, *et seq.*, funded through premiums and general tax revenue, is a voluntary program in which the beneficiary pays premiums to Medicare, and in return Medicare pays the costs of his or her medically-necessary outpatient services, such as doctors' office visits;

(3) Medicare Part C, 42 U.S.C. § 1395w-21(a)(1), permits individuals eligible for Medicare to elect to receive their Medicare benefits through enrollment in an MAO;

(4) Medicare Part D, 42 USCS § 1395w-101 *et seq.*, provides voluntary prescription drug coverage to Medicare enrollees; and

(5) Medicare Part E, 42 U.S.C. §§ 1395x – 1395y, contains definitions and general provisions applicable to the entire Medicare program. The Medicare Secondary Payer Act, 42 U.S.C. § 1395y(b), is codified in Part E.

[3] *See* 2015 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds, p. 7.

B. Medicare Advantage ("MA")

15. The Balanced Budget Act of 1997, Pub. L. 105-33, established the "Medicare+Choice" program, later renamed "Medicare Advantage," by adopting a new "Part C" to Medicare,[4] which gave Medicare enrollees the option to receive their Medicare benefits from private health plans.[5] Congress passed Medicare Part C to "enable the Medicare program to utilize innovations that helped the private market contain costs and expand health care delivery options." HOUSE CONF. REP NO. 105-217, at 585 (1997), reprinted in 1997 U.S.C.C.A.N. 205-06.

16. Under the MA program, CMS pays MAOs a fixed monthly amount (a "capitation" fee) for each enrollee, and delegates to the MAOs the obligation to administer, pay, and assume all economic risk for the Medicare benefits provided to Part C enrollees in accordance with the requirements of Title XVIII and CMS Medicare regulations. *See* 42 U.S.C. § 1395w-23(a)(1)(A); 42 C.F.R. § 422.268.

17. To qualify to become an MA plan, an MAO must meet strict qualifying standards and contract with CMS to provide Medicare benefits to those Medicare beneficiaries who elect to enroll. MA plans must provide all Medicare benefits offered under Parts A and B. They generally also provide additional or "supplemental" benefits, which may include prescription drug coverage under Medicare Part D. *See* 42 U.S.C. §§ 1395w-21; 1395w-29.

18. When MA plans recover reimbursement from primary plans or other liable parties, those recoveries help reduce Medicare expenditures by the Medicare Trust Funds. Thus,

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[4] The governing provisions of Medicare Part C were incorporated into the Medicare Act at 42 U.S.C. §§ 1395w-21-1395w-28.

[5] Private health plans have been a part of Medicare since 1972, Pub. L. 92-603, Medicare Act at 42 U.S.C. § 1395mm.

MSP recoveries promote the essential purpose of Medicare Part C—shifting expenses from the Medicare program to the private sector.

19. Currently, there are over 17 million people (about 31% of all Medicare patients) enrolled in more than 2,800 MA plans offered nationally by more than 400 MAOs.

C. The Medicare Secondary Payer Act

20. Before 1980, Medicare generally paid for its enrollees' medical services, regardless of whether another insurer or tortfeasor was legally responsible to do so.

21. In 1980, in response to skyrocketing costs, Congress enacted the first in a series of amendments that shifted Medicare costs to other payers. Those amendments, along with their respective enforcement provisions, now collectively comprise the Medicare Secondary Payer Act ("MSP Act"). *See* 42 U.S.C. § 1395y(b). In summary, the MSP Act,

> [m]akes Medicare the secondary payer for medical services provided to Medicare beneficiaries whenever payment is available from another primary payer . . . In order to accommodate its beneficiaries, however, Medicare does make conditional payments for covered services, even when another source may be obligated to pay. . . . The way the system is set up the beneficiary gets the health care she needs, but Medicare is entitled to reimbursement if and when the primary payer pays her.

Cochran v. U.S. Health Care Fin. Admin., 291 F.3d 775, 777 (11th Cir. 2002). The primary intent underlying the MSP Act is to shift the financial burden of health care from the Medicare program to private insurers and thereby lower the cost of the Medicare program.

22. Under the Act, payment for treatment of a Medicare beneficiary, whether covered under Part A, B, C, or D, is "conditional" or "secondary," whenever there is a primary plan. A primary plan must either pay first for that treatment or else later reimburse the Medicare secondary payer for its conditional expenditure. 42 U.S.C. § 1395y(b)(2). A tortfeasor "carries its own risk" for liability, and is a "primary plan" under the MSP. 42 U.S.C. § 1395y(b)(2)(A), while an MAO is a "secondary payer." 42 U.S.C. § 1395w-22(a)(4).

23. A primary plan's reimbursement responsibility under the Act is "demonstrated by a judgment, a payment conditioned upon the recipient's compromise, waiver, or release (whether or not there is a determination or admission of liability) of payment for items or services included in a claim against the primary plan or the primary plan's insured, or by other means." 42 U.S.C. § 1395y(b)(2)(B)(ii). Thus, tort settlement in favor of a Medicare enrollee or any settlement payment to a claimant who is a Medicare enrollee triggers the tortfeasor's (or its liability insurer's) reimbursement obligation. *Taransky v. Sec'y of the United States HHS*, 760 F.3d 307, 315 (3d Cir. 2014) ("the fact of settlement alone, if it releases a tortfeasor from claims for medical expenses, is sufficient to demonstrate the beneficiary's obligation to reimburse Medicare."). In 1997, when Congress established what is currently Medicare Part C, it gave MAOs the right to charge primary plans to recover secondary payments, and specifically cross–referenced the MSP Act:

> (4) Organization as secondary payer
>
> Notwithstanding any other provision of law, a [Medicare Advantage] organization may (in the case of the provision of items and services to an individual under a [Medicare Advantage] plan under circumstances in which payment under this title is made secondary pursuant to section 1395y(b)(2)) of this title charge or authorize the provider of such services to charge, in accordance with the charges allowed under a law, plan, or policy described in such section—
>
> (A) the insurance carrier, employer, or other entity which under such law, plan, or policy is to pay for the provision of such services, or
>
> (B) such individual to the extent that the individual has been paid under such law, plan, or policy for such services.

See 42 U.S.C. § 1395w-22(a)(4).

24. Part C of the Medicare Act expressly incorporates the MSP Act into the MA program, authorizing an MAO to charge a primary plan or an individual that was paid by a

primary plan "under circumstances in which payment under this title is made secondary pursuant to" the MSP Act. 42 U.S.C. § 1395w-22(a)(4). In doing so, Congress expressed its understanding and intention that the MSP Act applied to Medicare Part C.

25. The MSP Act creates a federal coordination of benefits scheme by defining "primary plans" to include tortfeasors.[6]

26. Payments by an MAO are made conditionally, regardless of whether primary liability was established at the time of conditional payment,[7] when an MAO makes a payment for medical services that are the responsibility of a primary plan under the MSP Act and related federal statutes, regulations and guidelines, including 42 U.S.C. §§ 1395w-22(a)(4), 1395y(b)(2), 1395y(b)(3)(A), 42 C.F.R. §§ 422.108(f), 489.20(f)-(h), and 411.24(h) (the "MSP Law").

27. CMS interprets the MSP Law to apply to MAOs. "The MA organization will exercise the same rights to recover from a primary plan, entity or individual that the Secretary exercises under the MSP regulations." 42 C.F.R. § 422.108(f). A medical provider or a similarly situated entity that receives payment from a primary plan is, therefore, required to reimburse an MAO for conditional Medicare payments.

28. CMS further explains that the regulations give MAOs "the right, under existing Federal law, to collect for services for which Medicare is not the primary payer" using "the same

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[6] § 1395y(b)(2)(A)(ii). In this subsection, the term "primary plan" means a group health plan or large group health plan, to the extent that clause (i) applies, and a workmen's compensation law or plan, an automobile or liability insurance policy or plan (including a self-insured plan) or no–fault insurance, to the extent that clause (ii) applies. An entity that engages in a business, trade, or profession shall be deemed to have a self-insured plan if it carries its own risk (whether by a failure to obtain insurance, or otherwise) in whole or in part.

[7] The term "Conditional Payment means a Medicare payment for services for which another payer is responsible, made either on the bases set forth in [42 C.F.R. § 411.21 subparts C through H], or because the intermediary or carrier did not know that the other coverage existed." 42 C.F.R. § 411.21.

rights of recovery that the Secretary exercises under the Original Medicare MSP regulations." *See* CMS, Memorandum: Medicare Secondary Payment Subrogation Rights (Dec. 5, 2011).

29. The MSP Act requires that "a primary plan, and an entity that receives payment from a primary plan, shall reimburse" any conditional Medicare payments. 42 U.S.C. § 1395y(b)(2)(B)(ii).

30. The MSP Act's enforcement provision authorizes a private cause of action to recover primary payments or reimbursements owed under the MSP Act. 42 U.S.C. § 1395y(b)(3)(A). The provision further provides that damages "shall be in an amount double the amount otherwise provided." *Id.*[8]

31. The courts recognize that this private cause of action under the MSP Act exists in situations where liability is established by a separate adjudication or agreement. In other words, a primary plan's liability may be established by a ***judgment***, ***settlement***, or by other means.[9]

32. If a Medicare beneficiary does not reimburse Medicare as required by 42 C.F.R. § 411.24(h), the primary payer is obligated to do so. *See* 42 C.F.R. § 411.24(i)(1) ("In the case of liability insurance settlements . . . the following rule applies: If Medicare is not reimbursed as required by paragraph (h) of this section, the primary payer must reimburse Medicare *even*

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[8] 42 U.S.C. § 1395y(b)(3).

[9] *See Humana Med. Plan, Inc., v. Western Heritage Ins. Co.*, Case No. 15-11436 (11th Cir. 2016); *Glover v. Ligett Group, Inc.*, 459 F.3d 1304, 1308 (11th Cir. 2006) (*citing* 42 U.S.C. § 1395y(b)(3); § 1395y(b)(2)(B)(ii)); *accord MSP Recovery, LLC v. Allstate Ins. Co.*, 2016 BL 282030 (11th Cir. 2016). Courts in this District have followed the Eleventh Circuit's decision in *MSP Recovery v. Allstate. See Humana Med. Plan, Inc. v. Western Heritage Ins. Co.*, 1:12-cv-20123-MGC (S.D. Fla. 2012); *MSP Recovery, LLC v. Allstate Ins. Co.*, 2015 U.S. Dist. LEXIS 130834 (S.D. Fla. 2015); *MSP Recovery, LLC v. Progressive Select Ins. Co.*, 96 F. Supp. 3d 1356 (S.D. Fla. 2015); *MSP Recovery, LLC v. Progressive Select Ins. Co.*, 2015 U.S. Dist. LEXIS 134484 (S.D. Fla. May 18, 2015); and *MSP Recovery, LLC v. Allstate Insurance Company*, 1:15-cv-20788-PAS (S.D. Fla. June 24, 2015).

though it has already reimbursed the beneficiary or other party.") (emphasis added).

D. The Medicare, Medicaid, and SCHIP Extension Act of 2007 ("MMSEA")

33. If a primary plan does not fulfill its payment obligations, then Medicare, a contracted MAO, or the primary plan's contracted payer or full risk provider may make payments conditioned on reimbursement.[10] If a conditional payment is made, the primary payer must reimburse the secondary payer for that payment. These recovery rights, however, aren't worth much if MAOs are unable to identify primary payers in real time. *Cf. United States v. Baxter Int'l., Inc.*, 345 F. 3d 866 (11th Cir. 2003) (describing why traditional Medicare cannot more fully allege its reimbursement claims in a mass tort settlement, including the fact that all information needed to assert claims is in the exclusive possession of the settling parties). In *Avandia*, for example, the MAO was forced to seek the identities of settling MAO plan members through lawsuits in federal and state court, extensive data mining, and review of all relevant public filings—an extremely expensive, burdensome, and time-consuming process. *See In re Avandia Mktg., Sales Practices & Prods. Liab. Litig.*, 685 F.3d 353, 367 (3d Cir. 2012). Section 111 of the MMSEA was passed to end all that.

STANDING

Plaintiffs' Direct Right of Subrogation and their Assignments

34. Plaintiffs entered into binding agreements with certain MAOs, HMOs, MSOs, IPAs, (collectively, the "Assignors"), which assigned their rights of reimbursement, recovery and subrogation to Plaintiffs. Thus, Plaintiffs own all the Assignors claims for reimbursement and recovery, as well their subrogation rights, including the right to pursue recovery of medical

[10] *See Humana Med. Plan v. W. Heritage Ins. Co.*, 2016 U.S. App. LEXIS 14509, at *20 (11th Cir. 2016) and *In re Avandia Mktg., Sales Practices & Prods. Liab. Litig.*, 685 F.3d 353, 367 (3d Cir. 2012).

claims or payments, amounts owed on unpaid bills, and expenses paid by Assignors on behalf of their Enrollees, from entities liable as primary payers, including Defendants.

35. As a representative example, MSP Recovery, LLC, entered into an agreement with health plans irrevocably assigned to MSP Recovery, LLC its right to recover conditional payments made on behalf of its Enrollees. The assignment specifically states:

> Client hereby irrevocably assigns, transfers, conveys, sets over and delivers to MSP Recovery, and all of its successors and assigns, any and all of Client's right, title, ownership and interest in and to all Claims existing on the date hereof, whether based in contract, tort, statutory right, and any and all rights (including, but not limited to, subrogation) to pursue and/or recover monies for Client that Client had, may have had, or has asserted against any party in connection with the Claims and all rights and claims against primary payers and/or third parties that may be liable to Client arising from or relating to the Claims, including claims under consumer protection statutes and laws, and all information relating thereto, all of which shall constitute "Assigned Claims", excluding those claims previously identified by other vendors currently under contract with Client. The transfer, grant, right, or assignment of any and all of Client's right, title, ownership, interest and entitlements in and to the Assigned Claims shall remain the confidential and exclusive property of MSP Recovery or its assigns. This assignment is irrevocable and absolute.

[11] MSP Recovery, LLC, subsequently assigned its rights to Plaintiffs. This Assignment is a representative example of assignments Plaintiffs obtained from other MAOs and their assigns.

36. As a further representative Plaintiffs' Enrollees, suffered severe bodily injuries from adverse effects associated with the intended use of the mesh devices that required medical

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[11] Plaintiffs will be filing a redacted version of the assignment agreement to protect confidential and proprietary business information, including trade secrets. After the parties enter into an appropriate attorneys-only protective order, Plaintiffs will provide Defendants with an unredacted version of the assignment agreement. This procedure was adopted in *MAO-MSO Recovery II, LLC, et al. v. Farmers Insurance Exchange, et al.*, Case No. 17-cv-2559, in the United States District Court for the Central District of California, where the Court found good cause to redact the names of MAOs that assigned their claims to MSPA.

care and treatment.[12] This is representative of the conditional payments that Plaintiffs have the right to recover from Defendants.

BACKGROUND FACTS AND GENERAL ALLEGATIONS

37. Defendants' Pelvic Mesh Products contain monofilament polypropylene mesh and/or collagen. Despite claims that polypropylene is inert, the scientific evidence shows that this material as implanted in the relevant female Plaintiffs' Enrollees is biologically incompatible with human tissue and promotes a negative immune response in a large subset of the population implanted with Defendants' Pelvic Mesh Products. This negative response promotes inflammation of the pelvic tissue and can contribute to the formation of severe adverse reactions to the mesh. Furthermore, Defendants' collagen products cause hyper-inflammatory responses leading to problems including chronic pain and fibrotic reaction. Defendants' collagen products disintegrate after implantation in the female pelvis. The collagen products cause adverse tissue reactions, and are causally related to infection, as the collagen is a foreign organic material from animals. Cross linked collagen is harsh upon the female pelvic tissue. It hardens in the body. When mesh is inserted in the female body according to the manufacturers' instructions, it creates a non-anatomic condition in the pelvis leading to chronic pain and functional disabilities.

38. Defendants sought and obtained FDA clearance to market the Products under Section 510(k) of the Medical Device Amendment to the Food, Drug and Cosmetics Act. Section 510(k) provides for marketing of a medical device if the device is deemed "substantially equivalent" to other predicate devices marketed prior to May 28, 1976. No formal review for

[12] In accordance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the name and policy number of any Medicare beneficiary (including J.B.) will be provided only after an appropriate attorneys-only confidentiality order has been entered.

safety or efficacy is required, and no formal review for safety or efficacy was ever conducted with regard to the Products.

39. On July 13, 2011, the FDA issued a Safety Communication wherein the FDA stated that "serious complications associated with surgical mesh for transvaginal repair of POP are **not rare**" (emphasis in the original).

40. The FDA Safety Communication also stated, "*Mesh contraction* (shrinkage) is a *previously unidentified risk* of transvaginal POP repair with mesh that has been reported in the published scientific literature and in adverse event reports to the FDA . . . Reports in the literature associate mesh contraction with vaginal shortening, vaginal tightening and vaginal pain." (emphasis in original).

41. In a December 2011 Joint Committee Opinion, the American College of Obstetricians and Gynecologists ("ACOG") and the American Urogynecologic Society ("AUGS") also identified physical and mechanical changes to the mesh inside the body as a serious complication associated with vaginal mesh, stating: There are increasing reports of vaginal pain associated with changes that can occur with mesh (contraction, retraction, or shrinkage) that result in taut section of mesh . . . Some of these women will require surgical intervention to correct the condition, and some of the pain appears to be intractable.

42. The ACOG/AUGS Joint Committee Opinion also recommended, among other things, that "[p]elvic organ prolapse vaginal mesh repair should be reserved for high-risk individuals in whom the benefit of mesh placement may justify the risk."

43. The injuries of the female Plaintiff as will be more fully set forth in the Plaintiff's Fact Sheet to be served in this civil action are reported in the FDA Safety Communication and in the ACOG/AUGS Joint Committee Opinion.

44. The FDA Safety Communication further indicated that the benefits of using transvaginal mesh products instead of other feasible alternatives did not outweigh the associated risks.

45. Specifically, the FDA Safety Communication stated: "it is not clear that transvaginal POP repair with mesh is more effective than traditional non-mesh repair in all patients with POP and it may expose patients to greater risk."

46. Contemporaneously with the Safety Communication, the FDA released a publication titled "Urogynecologic Surgical Mesh: Update on the Safety and Effectiveness of Transvaginal Placement for Pelvic Organ Prolapse" (the "White Paper"). In the White Paper, the FDA noted that the published, peer-reviewed literature demonstrates that "[p]atients who undergo POP repair with mesh are subject to mesh-related complications that are not experienced by patients who undergo traditional surgery without mesh."

47. The FDA summarized its findings from its review of the adverse event reports and applicable literature stating that it "has NOT seen conclusive evidence that using transvaginally placed mesh in POP repair improves clinical outcomes any more than traditional POP repair that does not use mesh, and it may expose patients to greater risk." (Emphasis in original).

48. The FDA White Paper further stated that "these products are associated with serious adverse events . . . Compounding the concerns regarding adverse events are performance data that fail to demonstrate improved clinical benefit over traditional non-mesh repair."

49. In its White Paper, the FDA advises doctors to, *inter alia*, "[r]ecognize that in most cases, POP can be treated successfully without mesh thus avoiding the risk of mesh-related complications."

50. The FDA concludes its White Paper by stating that it "has identified serious safety and effectiveness concerns over the use of surgical mesh for the transvaginal repair of pelvic organ prolapse."

51. Defendants knew or should have known about the Products' risks and complications identified in the FDA Safety Communication and the ACOG/AUGS Joint Committee Opinion.

52. Defendants knew or should have known that the Products unreasonably exposed patients to the risk of serious harm while conferring no benefit over available feasible alternatives that do not involve the same risks.

53. The scientific evidence shows that the material from which Defendants' Products are made is biologically incompatible with human tissue and promotes a negative immune response in a large subset of the population implanted with the Products, including the Plaintiffs' Enrollees.

54. This negative response promotes inflammation of the pelvic tissue and contributes to the formation of severe adverse reactions to the mesh, such as those experienced by Plaintiffs' Enrollees.

55. The FDA defines both "degradation" and "fragmentation" as "device problems" to which the FDA assigns a specific "device problem code." "Material Fragmentation" is defined as an "[i]ssue associated with small pieces of the device breaking off unexpectedly" and "degraded" as an "[i]ssue associated with a deleterious change in the chemical structure,

physical properties, or appearance in the materials that are used in device construction." The Products were unreasonably susceptible to degradation and fragmentation inside the body.

56. The Products were unreasonably susceptible to shrinkage and contraction inside the body.

57. The Products were unreasonably susceptible to "creep" or the gradual elongation and deformation when subject to prolonged tension inside the body.

58. The Products were and continue to be marketed to the medical community and to patients as safe, effective, reliable, medical devices, implanted by safe and effective, minimally invasive surgical techniques, and as safer and more effective as compared to available feasible alternative treatments of pelvic organ prolapse and stress urinary incontinence, and other competing products.

59. Defendants omitted the risks, dangers, defects, and disadvantages of the Products, and advertised, promoted, marketed, sold and distributed the Products as safe medical devices when Defendants knew or should have known that the Products were not safe for their intended purposes, and that the Products would cause, and did cause, serious medical problems, and in some patients, including the Plaintiffs'. Enrollees, catastrophic injuries.

60. Contrary to Defendants' representations and marketing to the medical community and to the patients themselves, the Products have high rates of failure, injury, and complications, fail to perform as intended, require frequent and often debilitating re-operations, and have caused severe and irreversible injuries, conditions, and damage to a significant number of women, including the Plaintiffs' Enrollees, making them defective under the law.

61. The specific nature of the Products' defects includes, but is not limited to, the following:

a. the use of polypropylene and collagen material in the Products and the immune reactions that result from such material, causing adverse reactions and injuries;

b. the design of the Products to be inserted into and through an area of the body with high levels of bacteria that can adhere to the mesh causing immune reactions and subsequent tissue breakdown and adverse reactions and injuries;

c. biomechanical issues with the design of the Products, including, but not limited to, the propensity of the Products to contract or shrink inside the body, that in turn cause surrounding tissue to be inflamed, become fibrotic, and contract, resulting in injury;

d. the use and design of arms and anchors in the Products, which, when placed in the women, are likely to pass through contaminated spaces and that can injure major nerve routes in the pelvic region;

e. the propensity of the Products for "creep," or to gradually elongate and deform when subject to prolonged tension inside the body;

f. the inelasticity of the Products, causing them to be improperly mated to the delicate and sensitive areas of the vagina and pelvis where they are implanted, and causing pain upon normal daily activities that involve movement in the pelvic region (e.g., intercourse, defecation, walking); and

g. the propensity of the Products for degradation or fragmentation over time, which causes a chronic inflammatory and fibrotic reaction, and results in continuing injury over time;

h. the hyper-inflammatory responses to collagen leading to problems including chronic pain and fibrotic reaction;

i. the propensity of the collagen products to disintegrate after implantation in the female pelvis, causing pain and other adverse reactions;

j. the adverse tissue reactions caused by the collagen products, which are causally related to infection, as the collagen is a foreign organic material from animals;

k. the harshness of cross linked collagen upon the female pelvic tissue, and the hardening of the product in the body;

l. the creation of a non-anatomic condition in the pelvis leading to chronic pain and functional disabilities when the mesh is implanting according to the manufacturers' instructions.

62. The Products are also defective due to Defendants' failure to adequately warn or instruct Plaintiffs' Enrollees and/or their health care providers of subjects including, but not limited to, the following:

a. the Products' propensities to contract, retract, and/or shrink inside the body;

b. the Products' propensities for degradation, fragmentation and/or creep;

c. the Products' inelasticity preventing proper mating with the pelvic floor and vaginal region;

d. the rate and manner of mesh erosion or extrusion;

e. The risk of chronic inflammation resulting from the Products;

f. the risk of chronic infections resulting from the Products;

g. the risk of permanent vaginal or pelvic scarring as a result of the Products;

h. the risk of recurrent, intractable pelvic pain and other pain resulting from the Products;

i. the need for corrective or revision surgery to adjust or remove the Products;

j. the severity of complications that could arise as a result of implantation of the Products;

k. the hazards associated with the Products;

l. the Products' defects described herein;

m. treatment of pelvic organ prolapse and stress urinary incontinence with the Products is no more effective than feasible available alternatives;

n. treatment of pelvic organ prolapse and stress urinary incontinence with the Products exposes patients to greater risk than feasible available alternatives;

o. treatment of pelvic organ prolapse and stress urinary incontinence with the Products makes future surgical repair more difficult than feasible available alternatives;

p. use of the Products puts the patient at greater risk of requiring additional surgery than feasible available alternatives;

q. removal of the Products due to complications may involve multiple surgeries and may significantly impair the patient's quality of life; and

r. complete removal of the Products may not be possible and may not result in complete resolution of the complications, including pain.

63. Defendants underreported information about the propensity of the Products to fail and cause injury and complications, and have made unfounded representations regarding the efficacy and safety of the Products through various means and media.

64. Defendants failed to perform proper and adequate testing and research in order to determine and evaluate the risks and benefits of the Products.

65. Defendants failed to design and establish a safe, effective procedure for removal of the Products, or to determine if a safe, effective procedure for removal of the Products exists.

66. Feasible and suitable alternatives to the Products existed at all times relevant that do not present the same frequency or severity of risks as do the Products.

67. The Products were at all times utilized and implanted in a manner foreseeable to Defendant, as Defendants generated the instructions for use, created the procedures for implanting the devices, and trained the implanting physician.

68. Defendants provided incomplete and insufficient training and information to physicians regarding the use of the Products and the aftercare of patients implanted with the Products.

69. The Product or products implanted in Plaintiffs' Enrollees were in the same or substantially similar condition as they were when they left Defendants' possession, and in the condition directed by and expected by Defendants.

70. The injuries, conditions, and complications suffered by numerous women around the world who have been implanted with the Products include, but are not limited to, erosion, mesh contraction, infection, fistula, inflammation, scar tissue, organ perforation, dyspareunia (pain during sexual intercourse), blood loss, neuropathic and other acute and chronic nerve damage and pain, pudendal nerve damage, pelvic floor damage, and chronic pelvic pain.

71. In many cases, including the Plaintiffs' Enrollees, the women were forced to undergo extensive medical treatment, including, but not limited to, operations to locate and remove mesh, operations to attempt to repair pelvic organs, tissue, and nerve damage, the use of pain control and other medications, injections into various areas of the pelvis, spine, and the vagina, and operations to remove portions of the female genitalia.

72. The medical and scientific literature studying the effects of Defendants' mesh products, like that of the product(s) implanted in the relevant Plaintiffs' Enrollees, examined each of these injuries, conditions, and complications, and reported that they are causally related to the Products.

73. Removal of contracted, eroded and/or infected mesh can require multiple surgical interventions for removal of mesh and results in scarring on fragile compromised pelvic tissue and muscles.

74. At all relevant times herein, Defendants continued to promote the Products as safe and effective even when no clinical trials were supporting long- or short-term efficacy.

75. In doing so, Defendants failed to disclose the known risks and failed to warn of known or scientifically knowable dangers and risks associated with the Products.

76. At all relevant times herein, Defendants failed to provide sufficient warnings and instructions that would have put the Plaintiffs' Enrollees and the general public on notice of the dangers and adverse effects caused by implantation of the Products.

77. The Products as designed, manufactured, distributed, sold and/or supplied by Defendants were defective as marketed due to inadequate warnings, instructions, labeling and/or inadequate testing in the presence of Defendant's knowledge of lack of safety.

78. As a result of having the Products implanted in Plaintiff's Enrollees, they experienced significant mental and physical pain and suffering, has sustained permanent injury, have undergone medical treatment and will likely undergo further medical treatment and procedures, have suffered financial or economic loss, including, but not limited to, obligations for medical services and expenses, and/or lost income, and other damages.

79. The MDL Plaintiffs, and Defendants entered into a settlement agreement (the "Settlement Agreement") where they agreed to settle pending litigation related to Products and acknowledging the claims for personal injuries related to the Products.

80. At the time of settlement, Defendants knew, had reason to know, or should have known of their statutory duty, as primary payers, to pay for the Enrollees' Product-related medical expenses, or reimburse Plaintiffs and Class Members for their conditional payments.

81. Under the Medicare Secondary Payer Act, "A primary plan's responsibility for such payment may be demonstrated by a judgment, *a payment conditioned upon the recipient's compromise, waiver, or release (whether or not there is a determination or admission of liability)* of payment for items or services included in a claim against the primary plan or the

primary plan's insured, or by other means." 42 U.S.C. § 1395y(b)(2)(B) (emphasis added).

82. As such, the above-referenced settlement made Defendants responsible, as primary payers under the MSP Act, for reimbursing Plaintiffs and Class Members for their conditional payments of the Enrollees' Product-related medical expenses. *See* 42 U.S.C. § 1395y(b)(2)(B), quoted above.

83. Defendant GRG was appointed to take control of and administer the settlement. Lawful administration of that settlement required GRG, among other things, to reimburse the MAOs for their conditional payments of Product-related medical expenses, including those of Plaintiffs' Enrollees, and the Class Members.

84. On June 6, 2016, Plaintiffs notified the leadership of the Steering Committee and GRG of Plaintiffs' and Class members' reimbursement rights and demanded that their conditional payments of Products-related medical expenses be reimbursed from the Settlement Funds.

85. Despite receiving notice of Plaintiffs' and the Class Members' rights to reimbursement, Defendants failed to meet their payment obligations under the MSP Act

86. Defendants failed to reimburse Plaintiffs or the Class Members for their conditional payments of the Enrollees' Products-related medical expenses.

87. Defendants violated their statutory obligations to ascertain and properly reimburse MAOs that provided Products-related Medicare benefits to their Enrollees. Defendants' settlement payments and resulting releases do not limit or alter their reimbursement obligations under the MSP Law (including the MSP Act, other Medicare provisions and federal regulations cited above).

88. Plaintiffs have the right to recover double damages from Defendants (an amount

double the sums otherwise provided), because of Defendants' failure to appropriately reimburse Plaintiffs and Class Members for conditional payments of the Enrollees' Products-related medical expenses. *See* 42 U.S.C. §§ 1395w-22(a)(4), 1395y(b)(3)(A).

CLASS ALLEGATIONS

FLORIDA RULE OF CIVIL PROCEDURE 1.220

89. Plaintiffs bring this suit both individually and, in accordance with Federal Rule of Civil Procedure 23(a), on behalf of a Class of similarly situated Florida MAOs or their assignees, within the territories of the United States. Plaintiff seeks certification of the claims and certain issues in this action on behalf of the Class Members. Plaintiff seeks monetary damages against Defendant on behalf of the Class Members.

90. Federal Rule of Civil Procedure 23(a) states in pertinent part, that Plaintiff may sue as a representative party on behalf of the Class, if it establishes that:

a. the members of the class are so numerous that separate joinder of each member is impracticable;

b. the claim or defense of the representative party raises questions of law or fact common to the questions of law or fact raised by the claim or defense of each member of the class;

c. the claim or defense of the representative party is typical of the claim or defense of each member of the class; and

d. the representative party can fairly and adequately protect and represent the interests of each member of the class.

91. The Class that Plaintiffs seek to represent is defined as follows:

> Entities that contracted directly with the Centers for Medicare and Medicaid Services ("CMS") or their assignees pursuant to Medicare Part C, or both, as well as MAOs, MSOs, IPAs, and other similar entities, to provide Medicare benefits through a Medicare Advantage Plan to Medicare beneficiaries for medical services, treatment, drugs, or supplies ("Medicare Services"), as required and regulated by HHS or CMS, or both, as a direct or indirect payer as a result of partial or full risk agreements on behalf of Medicare beneficiaries for parts A, B or D, or all of the

parts, all of which pertain to the same medical services that were caused by the Defendants' product, for which the Defendant has conceded and accepted primary obligation by nature of the MDL Proceedings' settlement; and that have made payment(s) for Medicare Services, whereby, the MAO or its assignee, as a secondary payer, has the right and responsibility to obtain reimbursement for such Medicare Services. Defendants are the primary payers as they are primarily responsible because of their tortious actions and are required to reimburse, including but not limited to, the MAOs or their assignees.

92. The Class is properly brought and should be maintained as a class action under Rule 23(a), as:

a. **Numerosity:** Joinder of all members is impracticable as there are over 600 MAOs and MA Plans (including the organizations that assigned their rights to Plaintiffs) throughout the United States that made secondary payments for Products-related injuries for its Enrollees. Thus, Plaintiffs and the Class meet the numerosity requirement.

b. **Commonality:** Plaintiffs and the Class Members have claims that raise common questions of law and fact. This is an action where the Plaintiffs and individual Class Members have claims that are based on the same theory of recovery (that is, that they are entitled to reimbursement from Defendants for payments made on behalf of their Enrollees). Each Class Member, including Plaintiffs, possess the same rights to recover its payments under the MSP Law. *See* 42 U.S.C. §§ 1395w-22(a)(4), 1395y(b)(2), 1395y(b)(3)(A); 42 C.F.R. §§ 422.108(f), 489.20(f)-(h), 411.24(h). Plaintiffs' claim arises from the same practice or course of conduct that gave rise to the Class Members' claims. Plaintiffs and the Class Members: (1) made secondary payments on behalf of its Enrollees for Products-related medical treatment; (2) Defendants became primary payers by virtue of their tortious conduct; and (3) Class Members and Plaintiffs were not reimbursed by the Defendants.

c. **Typicality:** Plaintiffs' claims are typical for the Class, as Plaintiffs and the Class Members are entitled to the same relief arising from the same course of conduct, *i.e.*, Defendants' failure to reimburse the Class Members (or their assignees), for payments made for the cost of their Enrollees' medical items and services provided. Plaintiffs seek to recover the payments Defendants should have reimbursed to Plaintiffs and the Class Members when they received and distributed settlement payments. Defendants' bad acts and defenses are similar with respect to Plaintiffs and the other Class Members. Each Class Member therefore sustained damages in the same manner as Plaintiffs as a result of Defendants' wrongful conduct. As such, Plaintiffs, by pursuing their own claims, will advance the Class' interests as

well.

d. **Adequacy:** Plaintiffs are adequate representatives of the Class and will fairly and adequately protect the interests of the Class. Plaintiffs are a member of the Class as defined above. Plaintiffs are committed to the active and vigorous prosecution of this action, and retained competent counsel experienced in class-action litigation. There is no hostility of interests between Plaintiffs and the other members of the Class. Plaintiffs anticipate no difficulty in managing this litigation as a class action. Plaintiffs have no claims that are antagonistic to the claims of the Class Members or the claims it seeks to represent.

93. In addition to satisfying Rule 23(a), Plaintiffs also satisfy the requirements of Rule 23(b). Questions of law or fact common to the Plaintiffs and Class Members' claims predominate over any questions of law or fact affecting only individual Class Members. This is because all claims by Plaintiffs and the unnamed Class Members are based on the Defendants' tortious conduct. In determining whether common questions predominate, courts focus on the liability issue, and if the liability issue is common to the class, as it is in this case, common questions will be held to predominate over individual questions.

94. Further, the common questions in this case are susceptible to generalized, class-wide proof using Plaintiffs' software system (the "System"). Plaintiffs implemented a methodology to capture, compile, and synthesize large amounts of data to identify claims class-wide. This System captures data from various sources to identify instances where MAOs or their assigns are entitled to reimbursement.

95. A class action is superior to individual actions, in part because of the following, non-exhaustive list of factors:

a. Individual joinder of all Class Members would impose extreme hardship and inconvenience on them, because they do business all over the nation;

b. Individual claims by Class Members are impractical because the cost of pursuing an individual claim could exceed its value. As a result, individual Class Members have no interest in prosecuting and controlling separate actions;

c. There are no known Class Members who are interested in individually controlling the prosecution of separate actions;

d. The interests of justice will be served by resolving the common disputes of all Class Members in one forum;

e. Judicial and party resources will be conserved by resolving the common disputes of all Class Members in one forum;

f. Individual claims would not be cost effective or economically feasible to pursue through individual actions; and

g. The action is manageable as a class action.

h. A multi-district litigation was already created for this action.

96. The prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications with respect to individual Class Members that would establish incompatible standards of conduct for Defendants and any other party opposing the Class.

COUNT I
Private Cause of Action for Double Damages
(Under 42 U.S.C. § 1395y(b)(3)(A))

97. Plaintiffs and Class Members re-allege paragraphs 1-96 as if fully set forth here.

98. Plaintiffs' assignors and Class Members made secondary payments, as Medicare providers, for items and services provided to their Enrollees because of implantation of Products

and use, in accordance with its contract with CMS.

99. Products, were designed, manufactured, and sold by Defendants.

100. The United States Congress "established a private cause of action for damages (which shall be in an amount double the amount otherwise provided) in the case of a primary plan that fails to provide for primary payment, or appropriate reimbursement" in accordance with the MSP Act. *See* 42 U.S.C. § 1395y(b)(3)(A).

101. The Defendants entered into the Settlement Agreement in which the agreed to settle pending litigation related to Products and acknowledged the claims for personal injuries related to Products.

102. Defendants' responsibility to pay for Enrollees' medical expenses is demonstrated by "a separate adjudication or agreement" (that is, a settlement agreement), when it entered into the Settlement Agreement with Enrollees. This satisfies any condition precedent to bringing this cause of action under the MSP Act, as interpreted by the Eleventh Circuit.[13]

103. Defendants negotiated the Settlement Agreement with Enrollees relating to their injuries sustained as a result of the Products and obtained a release of liability for itself, in total disregard of any Medicare benefits conditionally paid on an Enrollees' behalf. Defendants, failed to follow its obligations to make the reimbursements.

104. By virtue of the Settlement Agreement, Defendants became the primary payer and the primary plan under the Medicare Secondary Payer Act. *See* 42 U.S.C. § 1395y(b)(2)(A). As such, Defendants were required to make appropriate reimbursement for the conditional Medicare benefits advanced by Plaintiffs' assignors and Class Members on behalf of Enrollees.

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[13] *Glover v. Ligett Group, Inc.*, 459 F.3d 1304, 1308 (11th Cir. 2006); *Humana v. Western Heritage*, 832 F.3d 1229 (11th Cir. 2016).

105. Defendants must reimburse Medicare even if it already paid Enrollees. *See* 42 C.F.R. § 411.24(i)(1).

106. Under the private cause of action established by 42 U.S.C. § 1395y(b)(3)(A), Plaintiffs are entitled to recover double the amount from Defendants representing the: (a) the total amount of the fee-for-service expenses for medical services, treatment, or supplies that were rendered to Enrollees; or (b) the total amount of conditional payments for medical services, treatment or supplies advanced on behalf of Enrollees by Plaintiffs' assignors and Class Members.

WHEREFORE, Plaintiffs demand judgment against Defendants, for double damages under 42 U.S.C. § 1395y(b)(3)(A), reasonable attorney's fees, court costs, interests, and any other relief this Court deems just and proper.

COUNT II
GARRETSON RESOLUTION GROUP
Breach of Fiduciary Duty

107. Plaintiffs and Class Members re-allege paragraphs 1-9 as if fully set forth here.

108. Plaintiffs' assignors and Class Members made secondary payments, as Medicare providers, for items and services provided to their Enrollees because of being implanted with Products, in accordance with its contract with CMS.

109. Defendants entered into the Settlement Agreement in which they agreed to settle pending litigation related to Products and acknowledged the claims for personal injuries arising from Products use. As part of that agreement, Defendants agreed to pay approximately $200 million to resolve Products claims.

110. That agreement demonstrated Defendants' responsibility to reimburse conditional payments made by the Plaintiffs' assignors and the Class Members. Thus, Defendants are

primary payers and the primary plans under the Medicare Secondary Payer Act, 42 U.S.C. § 1395y(b)(2)(A), and were required by law to reimburse Plaintiffs' assignors and the Class Members for conditional payments they made on behalf of Enrollees.

111. GRG was hired and appointed by the MDL court to identify and resolve any claims for reimbursement, including the claims of Plaintiffs' assignors and the Class Members. In fact, through the MDL, GRG was charged with the responsibility to resolve all outstanding conditional payments that Plaintiffs' assignors and the Class Members made on behalf of Enrollees.

112. Accordingly, GRG owed an express and implied fiduciary duty to all those who were beneficiaries of the settlement fund, including Plaintiffs' assignors and Class Members, to resolve their claims for reimbursement of conditional payments.

113. Had GRG discharged its responsibilities, it would have, or should have, identified that Plaintiffs' assignors and the Class Members made payments on behalf of Enrollees, such that reimbursement was required under the MSP Act. However, GRG did no such thing and accordingly breached its fiduciary duty to Plaintiffs' assignors and Class Members by failing to identify, much less resolve, their reimbursement claims.

114. As a result of GRG's breach of its fiduciary duty, Plaintiffs' assignors and the Class Members suffered damages.

WHEREFORE, Plaintiffs demand judgment against GRG for damages, reasonable attorney's fees, court costs, interests, and any other relief this Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the Class Members, request that the Court grant the following relief:

a. find that this action satisfies the prerequisites for maintenance of a class action under the Federal Rules of Civil Procedure and certify the Class;

b. designate Plaintiffs as representatives for the Class and Plaintiffs' undersigned counsel as Class Counsel for the Class; and

c. issue a judgment against Defendants that:

d. grants Plaintiffs and the Class Members a reimbursement of double damages for those moneys the Class is entitled to under 42 U.S.C. § 1395y(b)(3)(A);

e. grants Plaintiffs and the Class alleged here equitable relief by issuing an injunction ordering Defendants to comply with their statutory duties, to prevent Plaintiffs and the Class Members from suffering irreparable future harm;

f. grants Plaintiffs and the Class Members pre-judgment and post-judgment interest consistent with the statute; and

g. grants Plaintiffs and the Class Members such other and further relief as the Court deems just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury of all issues so triable.

Dated: August 3, 2018.

Respectfully submitted,

MSP RECOVERY LAW FIRM
Counsel for Plaintiffs
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/s/Gustavo J. Losa
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Exhibit B

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

MSPA CLAIMS 1, LLC, a Florida limited liability company, MSP RECOVERY, LLC, a Florida entity, MAO-MSO RECOVERY II, LLC, a Delaware entity, and MSP RECOVERY SERIES, LLC, a Delaware entity,

Plaintiffs,

v.

C. R. BARD, INC., a corporation, SOFRADIM PRODUCTION, SAS, a foreign corporation, TISSUE SCIENCE LABORATORIES, a foreign corporation, and GARRETSON RESOLUTION GROUP, a foreign corporation,

Defendants.
_____/

Case No.: 2018-026469-CA-01

NOTICE OF FILING NOTICE OF REMOVAL TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

Defendant C. R. Bard, Inc. hereby gives notice that on November 19, 2018, it filed a Notice of Removal in the United States District Court for the Southern District of Florida, Miami Division, pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446. A copy of said Notice of Removal is attached hereto as Exhibit "A."

Dated: November 19, 2018

Respectfully submitted,

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/s/ Sabrina Gallo
SABRINA GALLO
Florida Bar No. 419273
JAY A. YAGODA
Florida Bar No. 84811

CERTIFICATE OF SERVICE

I hereby certify that on November 19, 2018, I electronically filed the foregoing with the Florida Courts E-Filing Portal. I also certify that the foregoing document is being served this day on the counsel of record via electronic mail and U.S. first class mail to: Gustavo J. Losa, MSP Recovery Law Firm, 5000 S.W. 75th Avenue, Suite 300, Miami, Florida 33155 [serve@msprecovery.com; glosa@msprecovery.com].

/s/ Sabrina Gallo
SABRINA GALLO