

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

WANDA QUEEN and GREG QUEEN	)	
	)	
Plaintiffs,	)	
	)	CIVIL ACTION FILE
v.	)	
	)	NO. _____
C. R. BARD, INC.,	)	
	)	
Defendant.	)	
_____	)	

**COMPLAINT**

COME NOW Wanda and Greg Queen as Plaintiffs herein and hereby file this Complaint, showing the Court as follows:

PARTIES, JURISDICTION AND VENUE

1.

Plaintiffs are citizens of the State of North Carolina.

2.

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

3.

Plaintiffs are seeking damages in excess of \$75,000.00.

Subject matter jurisdiction is proper pursuant to 28 U.S.C. § 1332.

4.

Bard Urological, the division of Defendant C. R. Bard, Inc. that designed, manufactured, marketed, packaged, labeled and sold the product at issue in this lawsuit, is located in the Northern District of Georgia in Covington, Georgia.

5.

Defendant has significant contacts with the Northern District of Georgia such that it is subject to personal jurisdiction within said district.

6.

A substantial part of the events and omissions giving rise to Plaintiffs' causes of action occurred in the Northern District of Georgia.

7.

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

FACTUAL BACKGROUND

8.

Plaintiff Wanda Queen was implanted with the Avaulta Solo Anterior Synthetic Support System (the "Product") during surgery performed by Dr. Elizabeth Barbee at Wake Medical Center in Raleigh, North Carolina.

9.

The Product was implanted in Plaintiff Wanda Queen to treat her pelvic organ prolapse, the use for which the Product was designed, marketed and sold.

10.

As a result of having the Product implanted in her, Plaintiff Wanda Queen has experienced significant mental and physical pain and suffering, has sustained permanent injury, and permanent and substantial physical deformity, has undergone or will undergo corrective surgery or surgeries, and has endured impaired physical relations with her husband, Plaintiff Greg Queen.

11.

Defendant designed, manufactured, marketed, packaged, labeled, and sold the Avaulta Solo Anterior Synthetic Support System, including the Product that was implanted in Plaintiff Wanda Queen.

CAUSES OF ACTION

COUNT I: NEGLIGENCE

12.

Plaintiffs incorporate by reference paragraphs 1-11 of the Complaint as if fully set forth herein.

13.

Defendant had a duty to individuals, including Plaintiff

Wanda Queen, to use reasonable care in designing, manufacturing, marketing, labeling, packaging and selling the Product.

14.

Defendant was negligent in failing to use reasonable care in designing, manufacturing, marketing, labeling, packaging and selling the Product.

15.

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

COUNT II: STRICT LIABILITY - DESIGN DEFECT

16.

Plaintiffs incorporate by reference paragraphs 1-11 of the Complaint as if fully set forth herein.

17.

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

18.

As a direct and proximate result of the Product's

aforementioned defects, Plaintiff Wanda Queen was caused and/or in the future will be caused to suffer severe personal injuries, pain and suffering, severe emotional distress, financial or economic loss, including but not limited to obligations for medical services and expenses, present and future lost wages, and other damages.

19.

Defendant is strictly liable to Plaintiff Wanda Queen for designing, manufacturing, marketing, labeling, packaging and selling a defective product.

COUNT III: STRICT LIABILITY - MANUFACTURING DEFECT

20.

Plaintiffs incorporate by reference paragraphs 1-11 of the Complaint as if fully set forth herein.

21.

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

22.

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

medical services and expenses, present and future lost wages, and other damages.

23.

Defendant is strictly liable to Plaintiff Wanda Queen for designing, manufacturing, marketing, labeling, packaging and selling a defective product.

COUNT IV: STRICT LIABILITY - FAILURE TO WARN

24.

Plaintiffs incorporate by reference paragraphs 1-11 of the Complaint as if fully set forth herein.

25.

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

26.

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

27.

Defendant is strictly liable to Plaintiff Wanda Queen for designing, manufacturing, marketing, labeling, packaging and selling a defective product.

COUNT V: BREACH OF EXPRESS WARRANTY

28.

Plaintiffs incorporate by reference paragraphs 1-11 of this Complaint as if fully set forth herein.

29.

Defendant made assurances to the general public, hospitals and health care professionals that the Product was safe and reasonably fit for its intended purpose.

30.

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

31.

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

32.

Defendant breached these express warranties because the

Product implanted in Plaintiff Wanda Queen was unreasonably dangerous and defective and not as Defendant had represented.

33.

Defendant's breach of its express warranties resulted in the implantation of an unreasonably dangerous and defective product in Plaintiff Wanda Queen's body, placing said Plaintiff's health and safety in jeopardy.

34.

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

COUNT VI: BREACH OF IMPLIED WARRANTY

35.

Plaintiffs incorporate by reference paragraphs 1-11 of this Complaint as if fully set forth herein.

36.

Defendant impliedly warranted that the Product was merchantable and were fit for the ordinary purpose for which it was intended.



37.

When the Product was implanted in Plaintiff Wanda Queen to treat her pelvic organ prolapse, the Product was being used for the ordinary purpose for which it was intended.

38.

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

39.

Defendant breached this implied warranty of merchantability because the Product implanted in Plaintiff Wanda Queen was neither merchantable nor suited for its intended use as warranted.

40.

Defendant's breach of its implied warranty resulted in the implantation of an unreasonably dangerous and defective product in Plaintiff Wanda Queen's body, placing said Plaintiff's health and safety in jeopardy.

41.

As a direct and proximate result of Defendant's breach of the aforementioned implied warranty, Plaintiff Wanda Queen was caused and/or in the future will be caused to suffer severe personal injuries, pain and suffering, severe emotional

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

COUNT VII: LOSS OF CONSORTIUM

42.

Plaintiffs incorporate by reference paragraphs 1-11 of this Complaint as if fully set forth herein.

43.

As a direct and proximate result of the above-described injuries sustained by Plaintiff Wanda Queen, her husband, Plaintiff Greg Queen has suffered a loss of his wife's consortium, companionship, society, affection, services and support.

COUNT VIII: PUNITIVE DAMAGES

44.

Plaintiffs incorporate by reference paragraphs 1-43 of this Complaint as if fully set forth herein.

45.

Defendant knew or should have known that the Product was defective and presented unreasonable risks of harm to Plaintiff Wanda Queen.

46.

Defendant's conduct as described in this Complaint, for which Plaintiffs are entitled to recover compensatory damages,

manifested a conscious indifference to, and/or flagrant disregard of, the safety of those persons who might foreseeably have been harmed by the Product, including Plaintiff Wanda Queen, justifying the imposition of punitive damages.

WHEREFORE, Plaintiffs demand trial by jury, judgment against Defendant for compensatory and punitive damages in an amount exceeding \$75,000, as well as costs, attorney fees, interest, or any other relief, monetary or equitable, to which they are entitled.

PLAINTIFFS DEMAND A TRIAL BY JURY.

**BLASINGAME, BURCH, GARRARD &  
ASHLEY, P.C.**

Attorneys for Plaintiffs

/s/ Henry G. Garrard, III

Gary B. Blasingame

Georgia Bar No. 062900

Henry G. Garrard, III

Georgia Bar No. 286300

Andrew J. Hill, III

Georgia Bar No. 353300

Josh B. Wages

Georgia Bar No. 730098

Leanna B. Pittard

Georgia Bar No. 344031

Adam B. Land

Georgia Bar No. 075641

440 College Avenue  
P.O. Box 832  
Athens, Georgia 30603  
706-354-4000

CIVIL COVER SHEET

The JS44 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 is required for the use of the Clerk of Court for the purpose of initiating the civil docket record. (SEE INSTRUCTIONS ATTACHED)

I. (a) PLAINTIFF(S)

WANDA QUEEN
GREG QUEEN

DEFENDANT(S)

C. R. BARD, INC.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF WAKE COUNTY, N.C. (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, TELEPHONE NUMBER, AND E-MAIL ADDRESS)

BLASINGAME, BURCH, GARRARD & ASHLEY, P.C.
440 COLLEGE AVENUE, SUIT 320
P.O. BOX 832
ATHENS, GEORGIA 30603
706-354-4000

ATTORNEYS (IF KNOWN)

NELSON, MULLINS, RILEY & SCARBOROUGH
201 17TH STREET, NW
SUITE 1700
ATLANTA, GEORGIA 30363
404-322-6155

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- 1 U.S. GOVERNMENT PLAINTIFF
2 U.S. GOVERNMENT DEFENDANT
3 FEDERAL QUESTION (U.S. GOVERNMENT NOT A PARTY)
4 DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) (FOR DIVERSITY CASES ONLY)

Table with columns for PLF and DEF, and rows for citizenship categories: 1 CITIZEN OF THIS STATE, 2 CITIZEN OF ANOTHER STATE, 3 CITIZEN OR SUBJECT OF A FOREIGN COUNTRY, 4 INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE, 5 INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE, 6 FOREIGN NATION.

IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- 1 ORIGINAL PROCEEDING
2 REMOVED FROM STATE COURT
3 REMANDED FROM APPELLATE COURT
4 REINSTATED OR REOPENED
5 TRANSFERRED FROM ANOTHER DISTRICT (Specify District)
6 MULTIDISTRICT LITIGATION
7 APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT

V. 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)

27 U.S.C. 1332

(IF COMPLEX, CHECK REASON BELOW)

- 1. Unusually large number of parties.
2. Unusually large number of claims or defenses.
3. Factual issues are exceptionally complex
4. Greater than normal volume of evidence.
5. Extended discovery period is needed.
6. Problems locating or preserving evidence
7. Pending parallel investigations or actions by government.
8. Multiple use of experts.
9. Need for discovery outside United States boundaries.
10. Existence of highly technical issues and proof.

CONTINUED ON REVERSE

FOR OFFICE USE ONLY

RECEIPT # AMOUNT \$ APPLYING IFP MAG. JUDGE (IFP)
JUDGE MAG. JUDGE (Referral) NATURE OF SUIT CAUSE OF ACTION

VI. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT - "0" MONTHS DISCOVERY TRACK

- 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
152 RECOVERY OF DEFAULTED STUDENT LOANS (Excl. Veterans)
153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS

CONTRACT - "4" MONTHS DISCOVERY TRACK

- 110 INSURANCE
120 MARINE
130 MILLER ACT
140 NEGOTIABLE INSTRUMENT
151 MEDICARE ACT
160 STOCKHOLDERS' SUITS
190 OTHER CONTRACT
195 CONTRACT PRODUCT LIABILITY
196 FRANCHISE

REAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 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 - "4" MONTHS DISCOVERY TRACK

- 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 - MEDICAL MALPRACTICE
365 PERSONAL INJURY - PRODUCT LIABILITY
368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

TORTS - PERSONAL PROPERTY - "4" MONTHS DISCOVERY TRACK

- 370 OTHER FRAUD
371 TRUTH IN LENDING
380 OTHER PERSONAL PROPERTY DAMAGE
385 PROPERTY DAMAGE PRODUCT LIABILITY

BANKRUPTCY - "0" MONTHS DISCOVERY TRACK

- 422 APPEAL 28 USC 158
423 WITHDRAWAL 28 USC 157

CIVIL RIGHTS - "4" MONTHS DISCOVERY TRACK

- 441 VOTING
442 EMPLOYMENT
443 HOUSING/ ACCOMMODATIONS
444 WELFARE
440 OTHER CIVIL RIGHTS
445 AMERICANS with DISABILITIES - Employment
446 AMERICANS with DISABILITIES - Other

IMMIGRATION - "0" MONTHS DISCOVERY TRACK

- 462 NATURALIZATION APPLICATION
463 HABEAS CORPUS- Alien Detainee
465 OTHER IMMIGRATION ACTIONS

PRISONER PETITIONS - "0" MONTHS DISCOVERY TRACK

- 510 MOTIONS TO VACATE SENTENCE
530 HABEAS CORPUS
535 HABEAS CORPUS DEATH PENALTY
540 MANDAMUS & OTHER
550 CIVIL RIGHTS - Filed Pro se
555 PRISON CONDITION(S) - Filed Pro se

PRISONER PETITIONS - "4" MONTHS DISCOVERY TRACK

- 550 CIVIL RIGHTS - Filed by Counsel
555 PRISON CONDITION(S) - Filed by Counsel

FORFEITURE/PENALTY - "4" MONTHS DISCOVERY TRACK

- 610 AGRICULTURE
620 FOOD & DRUG
625 DRUG RELATED SEIZURE OF PROPERTY 21 USC 881
630 LIQUOR LAWS
640 R.R. & TRUCK
650 AIRLINE REGS.
660 OCCUPATIONAL SAFETY / HEALTH
690 OTHER

LABOR - "4" MONTHS DISCOVERY TRACK

- 710 FAIR LABOR STANDARDS ACT
720 LABOR/MGMT. RELATIONS
730 LABOR/MGMT. REPORTING & DISCLOSURE ACT
740 RAILWAY LABOR ACT
790 OTHER LABOR LITIGATION
791 EMPL. RET. INC. SECURITY ACT

PROPERTY RIGHTS - "4" MONTHS DISCOVERY TRACK

- 820 COPYRIGHTS
840 TRADEMARK

PROPERTY RIGHTS - "8" MONTHS DISCOVERY TRACK

- 830 PATENT

SOCIAL SECURITY - "0" MONTHS DISCOVERY TRACK

- 861 HIA (1395ff)
862 BLACK LUNG (923)
863 DIWC (405(g))
863 DIWW (405(g))
864 SSID TITLE XVI
865 RSI (405(g))

FEDERAL TAX SUITS - "4" MONTHS DISCOVERY TRACK

- 870 TAXES (U.S. Plaintiff or Defendant)
871 IRS - THIRD PARTY 26 USC 7609

OTHER STATUTES - "4" MONTHS DISCOVERY TRACK

- 400 STATE REAPPORTIONMENT
430 BANKS AND BANKING
450 COMMERCE/ICC RATES/ETC.
460 DEPORTATION
470 RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS
480 CONSUMER CREDIT
490 CABLE/SATELLITE TV
810 SELECTIVE SERVICE
875 CUSTOMER CHALLENGE 12 USC 3410
891 AGRICULTURAL ACTS
892 ECONOMIC STABILIZATION ACT
893 ENVIRONMENTAL MATTERS
894 ENERGY ALLOCATION ACT
895 FREEDOM OF INFORMATION ACT
900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE
950 CONSTITUTIONALITY OF STATE STATUTES
890 OTHER STATUTORY ACTIONS

OTHER STATUTES - "8" MONTHS DISCOVERY TRACK

- 410 ANTITRUST
850 SECURITIES / COMMODITIES / EXCHANGE

OTHER STATUTES - "0" MONTHS DISCOVERY TRACK

- ARBITRATION (Confirm / Vacate / Order / Modify)

(Note: Mark underlying Nature of Suit as well)

\* PLEASE NOTE DISCOVERY TRACK FOR EACH CASE TYPE. SEE LOCAL RULE 26.3

VII. REQUESTED IN COMPLAINT:

CHECK IF CLASS ACTION UNDER F.R.Civ.P. 23 DEMAND \$

JURY DEMAND YES NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

VIII. RELATED/REFILED CASE(S) IF ANY

JUDGE DOCKET NO. SEE ATTACHED

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES: (CHECK APPROPRIATE BOX)

- 1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
2. SAME ISSUE OF FACT OR ARISES OUT OF THE SAME EVENT OR TRANSACTION INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT, COPYRIGHT OR TRADEMARK INCLUDED IN AN EARLIER NUMBERED PENDING SUIT.
4. APPEALS ARISING OUT OF THE SAME BANKRUPTCY CASE AND ANY CASE RELATED THERETO WHICH HAVE BEEN DECIDED BY THE SAME BANKRUPTCY JUDGE.
5. REPETITIVE CASES FILED BY PRO SE LITIGANTS.
6. COMPANION OR RELATED CASE TO CASE(S) BEING SIMULTANEOUSLY FILED (INCLUDE ABBREVIATED STYLE OF OTHER CASE(S)):

Beverly Pennington and Wayne Pennington v. C. R. Bard, Inc.

- 7. EITHER SAME OR ALL OF THE PARTIES AND ISSUES IN THIS CASE WERE PREVIOUSLY INVOLVED IN CASE NO. , WHICH WAS DISMISSED. This case IS IS NOT (check one box) SUBSTANTIALLY THE SAME CASE.

/s/ Henry G. Garrard, III
SIGNATURE OF ATTORNEY OF RECORD

11/24/2010
DATE

**VIII. RELATED/REFILED CASE(S) IF ANY:**

*Gail Chaplin, et al. v. C.R. Bard, Inc., et al.*, C.A. No. 1:09-1876  
*Cynthia H. Cowan et al. v. C.R. Bard, Inc., et al.*, C.A. No. 1:09-3339  
*Cindy Ezell, et al. v. C.R. Bard, Inc.*, C.A. No. 1:09-3539  
*Julie Dodd, et al. v. C.R. Bard, Inc.*, C.A. No. 1:09-3540  
*Janet McNally, et al. v. C.R. Bard, Inc.*, C.A. No. 1:09-3541  
*Patricia McCallan v. C.R. Bard, Inc.*, C.A. No. 1:09-3542  
*Sally Pete, et al. v. C.R. Bard, Inc.*, C.A. No. 1:09-3543  
*Anne McVay, et al. v. C.R. Bard, Inc.*, C.A. No. 1:09-3544  
*Beatrice Santillan, et al. v. C.R. Bard, Inc.*, C.A. No. 1:09-3545  
*Mary Lou Riley v. C.R. Bard, Inc.*, C.A. No. 1:09-3546  
*Kelly Poltermann, et al. v. C.R. Bard, Inc.*, C.A. No. 1:09-3642  
*Jacqueline M. Spangler v. C.R. Bard, Inc., et al.*, C.A. No. 1:09-3643  
*Kathryn Huston, et al. v. C.R. Bard, Inc.*, C.A. No. 1:09-3644  
*Linda Rizzo, et al. v. C.R. Bard, Inc.*, C.A. No. 1:09-3645  
*Jerry Dalman v. C.R. Bard, Inc.*, C.A. No. 1:09-3646  
*Debra Broussard, et al. v. Caldera Medical, Inc., et al.*, C.A. No. 1:10-1021  
*Jeannie Everly, et al. v. C.R. Bard, Inc.*, C.A. No. 1:10-1094  
*Lucy Tyson, et al. v. C.R. Bard, Inc.*, C.A. No. 1:10-1913  
*Susan B. Hirt, et al. v. Bard Peripheral Vascular, Inc., et al.*, C.A. No. 1:10-1924  
*Martha Bargeron v. C. R. Bard, Inc.*, C.A. No. 1:10-cv-03377

*In Re Avaulta Pelvic Support Systems Products Liability Litigation*, C. A. No. 2:10-2187 (S.D. W. Va.)