

1 GRETCHEN M. NELSON (112566)
gnelson@kreindler.com
2 KREINDLER & KREINDLER LLP
707 Wilshire Boulevard, Suite 5070
3 Los Angeles, CA 90017
Telephone: (213) 622-6469
4 Facsimile: (213) 622-6019

5 BERGER & MONTAGUE, P.C.
Daniel Berger
6 danberger@bm.net
Eric L. Cramer
7 ecramer@bm.net
David F. Sorensen
8 dsorensen@bm.net
Peter Kohn
9 pkohn@bm.net
Daniel C. Simons
10 dsimons@bm.net
1622 Locust Street
11 Philadelphia, PA 19103
Telephone: (215) 875-3000
12 Facsimile: (215) 875-4604

13 COHEN, MILSTEIN, HAUSFELD & TOLL, P.L.L.C.
Michael D. Hausfeld
14 mhausfeld@cmht.com
Richard A. Koffman
15 rkoffman@cmht.com
Christopher J. Cormier
16 ccormier@cmht.com
1100 New York Avenue, N.W.
17 Suite 500 West
Washington, D.C. 20005
18 Telephone: (202) 408-4600
Facsimile: (202) 408-4699

19 Brent W. Landau
20 blandau@cmht.com
One South Broad Street
21 Suite 1850
Philadelphia, PA 19107
22 Telephone: (215) 825-4016
Facsimile: (215) 825-4001
23

24 **IN THE UNITED STATES DISTRICT COURT**
25 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
26 **SOUTHERN DIVISION**

27 _____)
28 **IN RE ENDOSURGICAL PRODUCTS) Case No. 05-cv-8809-JVS-MLG**
DIRECT PURCHASER ANTITRUST)
LITIGATION)
_____) **CLASS ACTION**

1 **THIS DOCUMENT RELATES TO:**) **CONSOLIDATED**
2) **COMPLAINT**
3 **Case No. 05-cv-8809-JVS-MLG**)
4 **Case No. 05-cv-8900-JVS-MLG**) **DEMAND FOR JURY TRIAL**
5)

6 **I. JURISDICTION AND VENUE**

7 **A. Subject Matter Jurisdiction**

8 1. Plaintiffs bring this action pursuant to section 4 of the Clayton Act, 15
9 U.S.C. § 15(a), to recover treble damages, costs of suit and reasonable attorneys' fees
10 for Defendants' violation(s) of sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1-2.
11 Subject matter jurisdiction is proper pursuant to Section 4(a) of the Clayton Act, 15
12 U.S.C. § 15(a), and 28 U.S.C. §§ 1331 and 1337, because the action arises under the
13 laws of the United States.

14 **B. Personal Jurisdiction**

15 2. This Court possesses personal jurisdiction over defendant Ethicon, Inc.
16 because Ethicon, Inc. transacts business in California, maintains one or more offices
17 in California, and because of this defendant's commission of an antitrust violation,
18 in whole or in part, in California.

19 3. This Court possesses personal jurisdiction over defendant Ethicon
20 Endosurgery, Inc. ("EES") because EES transacts business in California and because
21 of this defendant's commission of an antitrust violation in whole or in part, in
22 California.

23 4. This Court possesses personal jurisdiction over defendant Johnson &
24 Johnson Health Care Systems, Inc. because Johnson & Johnson Health Care Systems
25 transacts business in California and because of this defendant's commission of an
26 antitrust violation in whole or in part, in California.

27 5. This Court possesses personal jurisdiction over defendant Johnson &
28

1 Johnson because Johnson & Johnson transacts business in California and because of
2 this defendant's commission of an antitrust violation, in whole or in part, in
3 California.

4 **C. Venue**

5 6. Venue is proper in this district under 15 U.S.C. §§ 15 and 22, and under
6 28 U.S.C. § 1391(b) and (c) because: (i) all defendants transact business and/or are
7 found within this district; and/or (ii) a substantial portion of the events giving rise to
8 the claims presented herein arose or occurred within this district.
9

10 **II. INTRODUCTION**

11 7. Delaware Valley Surgical Supply Co., Inc. ("Delaware Valley") and
12 Niagara Falls Memorial Medical Center ("Niagara Falls") (collectively, "Plaintiffs"),
13 on behalf of themselves and all others similarly situated, file this Complaint against
14 Ethicon, Inc.; EES; Johnson & Johnson Health Care Systems, Inc.; and Johnson &
15 Johnson (collectively "Defendants"). Delaware Valley is a medical device and supply
16 wholesaler. Niagara Falls is a provider of health care services. Plaintiffs bring suit
17 because Defendants' anticompetitive scheme, in violation of Sections 1 and 2 of the
18 Sherman Act, has artificially inflated the prices Plaintiffs and other members of the
19 Class (defined below) paid for certain endomechanical products.
20

21 8. Endomechanical products are small medical devices used in minimally
22 invasive, or "keyhole," surgery. They include endomechanical trocars, insufflation
23 needles and tubing, surgical scissors, graspers, dissectors, and clip appliers
24 (collectively, "Relevant Endomechanical Products").

25 9. As alleged in detail below, Defendants' scheme involves their leveraging
26 of the massive monopoly power they have with respect to one product group —
27 namely sutures (made by the Johnson & Johnson subsidiary, Ethicon, Inc.) — to
28 create, enhance, and maintain monopoly power in the market(s) for Relevant

1 Endomechanical Products (made by another Johnson & Johnson subsidiary, EES).
2 Defendants accomplished these ends through an exclusionary anticompetitive
3 scheme, involving practices intended both (a) to immediately extract higher prices by
4 effectively forcing certain products to be purchased as a bundled package, and (b) to
5 raise rivals' costs, frustrate the ability of rivals to get products to customers
6 efficiently, drive rivals out of business, and raise barriers to rivals' entering the
7 business in the first place. Defendants' conduct enhanced monopoly power and
8 caused artificial price inflation.
9

10 10. Defendants' scheme involved bundling the sales of sutures, a product
11 group over which Defendants have for a long time had extensive monopoly power in
12 the United States, with the sale of the Relevant Endomechanical Products. Under
13 Defendants' scheme, the only way to avoid massive financial penalties on purchases
14 of sutures was for purchasers to buy all or nearly all Relevant Endomechanical
15 Products only from Defendants. This bundling effectively forced purchasers to buy
16 from Defendants even where rivals' Relevant Endomechanical Products were (or
17 could have been) less expensive and of higher quality.
18

19 11. Defendants have used buying agents of hospitals — called group
20 purchasing organizations, or "GPOs" — to aid them in effectuating their scheme. For
21 instance, Defendants have imposed contractual conditions on purchases made through
22 contracts negotiated by GPOs, conditions which penalize purchasers who buy even
23 small percentages of their total purchases of Relevant Endomechanical Products from
24 Defendants' rivals. Indeed, pursuant to certain GPO contracts, health care entities
25 can be penalized merely for *evaluating* Relevant Endomechanical Products made by
26 one of Defendants' rivals.
27

28 12. Defendants' scheme has succeeded in suppressing competition from
actual and/or potential rivals that sell, or would offer for sale, superior and/or less

1 expensive Relevant Endomechanical Products. By bundling their products together
2 and eliminating and frustrating competition in this way, Defendants succeeded in
3 maintaining and enhancing their monopoly power, and artificially inflating the prices
4 of Relevant Endomechanical Products. Consequently, Plaintiff, and other similarly
5 situated purchasers of Relevant Endomechanical Products, have been overpaying
6 substantially for these products. Plaintiffs bring this suit on behalf of themselves and
7 a proposed Class of similarly situated purchasers (defined below) pursuant to the
8 federal antitrust laws to recover three times the full amount of the overcharges
9 sustained. In support hereof, based on information and belief and the investigation
10 of its counsel, Plaintiff further alleges as follows:

12 III. PARTIES

13 13. Plaintiff Delaware Valley Surgical Supply Co., Inc. is a corporation duly
14 formed and existing under the laws of the Commonwealth of Pennsylvania with
15 offices at 25 Creek Circle, Boothwyn, PA 19061. It is a medical device and supply
16 wholesaler that, at all relevant times, bought Relevant Endomechanical Products
17 directly from Defendant EES.

18 14. Plaintiff Niagara Falls Memorial Medical Center is a provider of health
19 care services with its principal place of business at 621 Tenth Street, Niagara Falls,
20 New York 14301. At all relevant times, it bought Relevant Endomechanical Products
21 directly from Defendant Johnson & Johnson Health Care Systems, Inc.

22 15. Defendant Johnson & Johnson is a corporation duly formed and existing
23 under the laws New Jersey, with its principal place of business in New Brunswick,
24 New Jersey. Johnson & Johnson, including through its wholly owned subsidiaries
25 identified below, manufactured and sold Relevant Endomechanical Products
26 throughout the United States and in this District during the Class Period (defined
27 below).
28

1 the effects of that conduct cease) (the "Class Period"). The
2 Class excludes Defendants, Defendants' parents,
3 subsidiaries and affiliates, and the federal government.

4 21. Joinder of all Class members is impracticable. While the size of the
5 Class is not yet known with any certainty, based on the nature of the trade and
6 commerce involved, Plaintiff believes that the Class potentially numbers in the
7 hundreds. Class members are geographically dispersed throughout the United States.
8 The Class members are readily identifiable from information and records in the
9 exclusive possession of Defendants.
10

11 22. Numerous questions of law and fact are common to the Class, including
12 but not limited to:

- 13 a. whether Defendants obtained and/or maintained
14 monopoly power in the market(s) for the Relevant
15 Endomechanical Products in the United States;
- 16 b. whether Defendants obtained and/or maintained
17 monopoly power willfully;
- 18 c. whether Defendants entered into illegal agreements,
19 contracts, and/or combinations, the purpose and
20 effect of which were to unreasonably restrain
21 competition in the market(s) for Relevant
22 Endomechanical Products;
- 23 d. whether Defendants' illegal contracts, schemes,
24 and/or conduct have harmed Plaintiffs and the
25 members of the Class;
- 26 e. whether Defendants' unlawful conduct caused
27 Plaintiffs and other Class members to pay more for
28

1 products in the relevant market(s) than they
2 otherwise would have paid, entitling the Plaintiffs
3 and Class members to overcharge damages; and

4 f. the Class-wide measure of damages.

5 23. Plaintiffs' claims are typical of the claims of the members of the Class.
6 Plaintiff and other Class members purchased Relevant Endomechanical Products
7 directly from Defendants at artificially inflated prices and were injured by the same
8 wrongful conduct of Defendants. Defendants' conduct in violation of the antitrust
9 laws, the effects of such violations, and the relief sought are all issues common to the
10 Plaintiffs and the Class.

11 24. As a representative of the Class, Plaintiffs will fairly and adequately
12 protect the interests of all Class members, and has engaged counsel experienced and
13 competent in antitrust and class action litigation. The interests of the Plaintiffs are
14 coincident with, and not antagonistic to, the interests of the other Class members.

15 25. The questions of law and fact that are common to the members of the
16 Class predominate over any questions affecting only individual Class members.
17 Moreover, whatever possible difficulties may exist in the management of the class
18 action are greatly outweighed by the advantages of the class action procedure,
19 including, but not limited to, providing Class members with a method for redress of
20 claims that might otherwise not warrant individual litigation.

21 26. Class action treatment is superior to other methods for the fair and
22 efficient adjudication of the controversy, in that, among other things, such treatment
23 will permit a large number of similarly situated persons to prosecute their common
24 claims in a single forum simultaneously, efficiently, and without the unnecessary
25 duplication of evidence, effort, and expense that numerous individual actions would
26 engender. A class action enables injured persons or entities to obtain redress on
27
28

1 claims that might not be practicable to pursue individually. Class treatment also
2 eliminates the potential for inconsistent adjudications.

3 27. Notice to the Class will be given via U.S. mail, publication, and/or by
4 other means as appropriate and/or as directed by the Court.

5 V. FACTS

6 A. Background

7 28. Endomechanical products are used in minimally invasive surgeries, also
8 known as “laparoscopic” or “keyhole” surgeries. Such surgeries have become
9 increasingly common in the United States. In traditional surgery, a large incision is
10 made to open up a patient’s body so that a surgeon can gain access to the organ or
11 organs to be operated upon. In keyhole surgery, a large incision is not required.
12 Instead, the abdomen is “insufflated”; that is, an insufflation needle is inserted into
13 the abdomen to inject pressurized gas, creating a space above the organ in which the
14 surgeon can operate.
15

16 29. A surgeon views what he or she is doing during the keyhole surgery via
17 a laparoscope attached to a camera and a light source, which project an image of the
18 body’s interior onto a monitor.

19 30. During such surgery, several trocars — tube-like devices only
20 millimeters in diameter — are then inserted through the abdominal wall to provide
21 access into the insufflated abdominal cavity.
22

23 31. During the surgery, a surgeon uses a variety of specifically-designed
24 endomechanical instruments — such as surgical scissors, graspers, and dissectors —
25 to perform the same tasks for which similar surgical instruments are used in
26 traditional surgery. These endomechanical instruments are inserted into a patient’s
27 insufflated abdomen through trocars and are used to manipulate, dissect and/or cut
28

1 tissue during keyhole surgery. Clip applicers are devices inserted through trocars to
2 close off blood vessels during keyhole surgeries.

3 **B. Johnson & Johnson Possesses Monopoly Power in the Market(s) for**
4 **Relevant Endomechanical Products**

5 **1. The Market(s) for Relevant Endomechanical Products**

6 32. By virtue of their power to control prices and exclude competition in the
7 market(s) for Relevant Endomechanical Products, Defendants, at all relevant times,
8 had monopoly power with respect to Relevant Endomechanical Products. Defendants
9 possess dominant shares of the market(s) for each of the Relevant Endomechanical
10 Products, and of the market for Relevant Endomechanical Products as a whole.
11

12 33. Factors indicative of Defendants' monopoly power include, *inter alia*,
13 that: (a) Defendants sold their Relevant Endomechanical Products at prices well in
14 excess of marginal costs and enjoyed very high profit margins; (b) Defendants sold
15 Relevant Endomechanical Products substantially in excess of the competitive price;
16 and (c) Defendants excluded, competitively impaired, and/or frustrated actual and
17 potential Relevant Endomechanical Product rivals by creating substantial artificial
18 barriers to market entry and growth.
19

20 34. The Relevant Endomechanical Product markets are: (a) the market for
21 trocars; (b) the market for insufflation needles and tubing; (c) the market for surgical
22 scissors; (d) the market for graspers; (e) the market for dissectors; and (f) the market
23 for clip applicers. In the alternative, all Relevant Endomechanical Products are in the
24 same relevant market.

25 35. The relevant geographic market for analyzing this case is the United
26 States.

27 36. There are no reasonably substitutable products for each of the Relevant
28 Endomechanical Products. In other words, if surgery calls for the use of trocars, there

1 are no other categories of products that are reasonably interchangeable with trocars
2 for the purposes for which trocars are used. Defendants have illegally erected
3 substantial artificial barriers to entry into the market(s) for Relevant Endomechanical
4 Products through the scheme alleged in this Complaint. Other barriers to entry
5 include the costs and timing of commencing or expanding competing business
6 operations in these (this) market(s), as well as patents and other intellectual property
7 covering the products in these (this) market(s).
8

9 37. During the time periods relevant to this action, Defendants' share of the
10 U.S. market for trocars has been in excess of 65%, increasing to 75% by 2002.

11 38. During the time periods relevant to this action, Defendants' share of the
12 U.S. market for insufflation needles and tubing has been in excess of 60%.

13 39. During the time periods relevant to this action, Defendants' share of the
14 U.S. markets for surgical scissors, graspers, and dissectors have each been in excess
15 of 70%.

16 40. During the time periods relevant to this action, Defendants' share of the
17 U.S. market for clip appliers has been in excess of 60%, increasing to 65% by 2002.

18 41. The combined volume of annual sales for endomechanical (and
19 endoscopic) products in the United States is approximately in excess of \$1 billion,
20 including \$285-300 million in sales of trocars and \$100 million in sales of clip
21 appliers.
22

23 42. Through the scheme alleged herein, Defendants have maintained and/or
24 established dominance in the market(s) for Relevant Endomechanical Products and
25 have monopoly power in each.

26 2. The Market for Sutures

27 43. Another product group relevant to this case is sutures. Sutures are
28 materials used during surgical procedures to stitch or otherwise close incisions and

1 wounds. There are various kinds and uses for sutures, and there are no reasonable
2 substitute products for sutures for such uses. Annual domestic sales for sutures
3 amount to nearly \$1 billion. At all times relevant to this lawsuit, Defendants have
4 held in excess of 80% of the U.S. market (or markets) for sutures, and have monopoly
5 power therein. Defendants have wielded that massive market power to create,
6 maintain, and enhance their market power and market shares for Relevant
7 Endomechanical Products.

8
9 **C. Defendants' Rivals**

10 44. There are at least three actual competitors for Relevant Endomechanical
11 Products that Defendants' scheme has foreclosed or severely limited from freely
12 competing with Defendants. Combined, the Relevant Endomechanical Product sales
13 of these three competitors comprised an estimated 4% to 5% of all Relevant
14 Endomechanical Product sales. Defendants' conduct has foreclosed and/or impaired
15 still other actual or potential competitors for Relevant Endomechanical Products as
16 well. All of these rivals offered Relevant Endomechanical Products that were less
17 expensive than and/or superior to Defendants' products, but were excluded or
18 impaired due to Defendants' anticompetitive scheme. Many potential customers
19 would prefer to purchase Relevant Endomechanical Products from Defendants'
20 competitors if not for the conduct alleged herein, but purchasers refrain from doing
21 so because of such conduct.

22
23 **1. Conmed Corp.**

24 45. Conmed Corp. ("Conmed") manufactures, *inter alia*, Relevant
25 Endomechanical Products. Conmed develops and sells a full line of cost-effective
26 Relevant Endomechanical Products, including trocars, insufflation needles and
27 tubing, graspers, surgical scissors, dissectors, and clip appliers.
28

1 46. The quality of Conmed's Relevant Endomechanical Products is at least
2 equal to and often superior to the products offered by Defendants. Conmed's
3 Relevant Endomechanical Products are sold at significantly lower prices than
4 comparable products sold by Defendants and could save individual hospitals and
5 other health care entities up to hundreds of thousands of dollars annually, if not for
6 Defendants' scheme. Defendants' conduct, as alleged herein, has impaired and
7 frustrated Conmed's sales and ability to gain market share.
8

9 **2. Genicon**

10 47. Genico, Inc., doing business as Genicon ("Genicon"), designs, develops,
11 manufactures, and markets Relevant Endomechanical Products. Such products
12 include trocars, surgical scissors, graspers, dissectors, and clip applicators.

13 48. The U.S. Food & Drug Administration first approved Genicon's products
14 for use in 1998. Genicon's products have been evaluated as easier to use than, and as
15 including technology superior to, Defendants' products, resulting in less patient
16 trauma and scarring, and fewer patient injuries overall.

17 49. In addition, Genicon's products are extremely cost-effective, selling at
18 prices more than 20% below Defendants' prices. These pricing advantages would
19 have, in an open and competitive market, made Genicon a formidable competitor for
20 Relevant Endomechanical Products. Instead, due to the illegal conduct of the
21 Defendants, Genicon was limited to less than 1% of the Relevant Endomechanical
22 Product sales.
23

24 **3. Applied Medical Resources Corp.**

25 50. Applied Medical Resources Corporation ("AMR") designs, develops,
26 manufactures, markets, and sells Relevant Endomechanical Products, including
27 trocars and clip applicators.
28

1 51. AMR's trocars have been called innovative, due in part to their
2 reportedly enhanced sealing capabilities. When inserted during keyhole surgery,
3 trocars are used to gain access to the cavity and to keep the cavity sealed. As an
4 access device, trocars cross through small entry sites made in the abdomen so that
5 endomechanical instruments can be inserted and removed. As a sealing device, the
6 trocar must keep the pressurized gas inside the body during surgery, allowing
7 endomechanical instruments to pass in and out of this environment without gas
8 leakage or excessive friction. AMR's trocar seal was the first to allow
9 endomechanical instruments to pass through seals without adaptors, leakage, or
10 excessive friction.
11

12 52. AMR's trocars and clip appliers are at least as good as, if not superior
13 to, Defendants' trocars and clip appliers. According to AMR, a majority of
14 GPO-member hospitals is unwilling even to speak with AMR about its trocar and clip
15 applier products due to Defendants' exclusionary conduct alleged herein. Hospitals
16 and other health care entities fear falling "out of compliance" with the exclusionary
17 requirements imposed by Defendants, and thereby risking severe penalties
18 Defendants' scheme imposes for dealing with Defendants' rivals.
19

20 53. Defendants' conduct is all the more egregious because Defendants'
21 trocars and clip appliers are significantly more expensive than AMR's competing
22 products. AMR's products are priced 40% below equivalent products offered by
23 Defendants. Indeed, AMR claims that during one marketing campaign in 2002, it had
24 offered its trocars at prices 60% below those charged by Defendants, yet failed to
25 obtain a single new purchaser due to Defendants' anticompetitive scheme.
26

27 **D. GPOs**

28 54. The GPOs are an important factor in Defendants' scheme to obtain,
maintain, and enhance their dominance in the market(s) for Relevant Endomechanical

1 Products. A majority of health-care entities in the United States buy their sutures and
2 Relevant Endomechanical Products from Defendants based on contracts negotiated
3 by GPOs. GPOs were originally formed to bargain with medical device
4 manufacturers on behalf of hospitals and other health care entities. Yet, Defendants
5 have skillfully used the GPOs as a part of their scheme to raise rivals' costs and
6 impair rivals' ability to compete.
7

8 55. GPOs negotiate contracts with suppliers on behalf of GPO member
9 hospitals and other health care entities. The GPOs do not typically buy or take title
10 to products for their members. Instead, the GPOs negotiate "model" or "proposed"
11 contracts with manufacturers and suppliers on behalf of the GPO-members. The GPO
12 members then use these "models" or "proposals" as a basis for contracting directly
13 with manufacturers.

14 56. Manufacturers often sell their products directly to distributors (such as
15 Delaware Valley), who then resell the products to hospitals and other health care
16 entities, pursuant to prices negotiated with the manufacturers by the GPOs or
17 individual health care entities. Manufacturers also sell their products directly to
18 hospitals, health care providers, and other health care entities (such as Niagara Falls),
19 also pursuant to prices negotiated with the manufacturers by the GPOs or these
20 individual health care entities.
21

22 57. According to varying reports and studies, between 68% to 98% of the
23 nation's hospitals belong to at least one GPO.

24 58. The two largest GPOs in the United States are Premier, Inc. ("Premier")
25 and Novation, L.L.C. ("Novation"). Collectively, members of these two GPOs buy
26 an estimated 65% of the Relevant Endomechanical Products purchased every year in
27 the United States. Novation members alone buy an estimated 35% of the Relevant
28 Endomechanical Products purchased every year in the United States.

1 59. Premier was formed in 1996 by a merger of three smaller GPOs. Premier
2 (and its subsidiaries or affiliates) represents over 1,600 member hospitals in the
3 United States on whose behalf Premier negotiates proposed or model contracts with
4 manufacturers. Novation was formed by the merger of VHA (which consisted of
5 veterans hospitals) and UHC (which consisted of university hospitals). Novation
6 negotiates proposed or model contracts with manufacturers for approximately 2,200
7 health-care entities nationwide, which collectively buy approximately \$19.6 billion
8 worth of various products, including medical supplies, surgical supplies,
9 pharmaceuticals, diagnostic imaging products, business products, laboratory products,
10 dietary and food products, and capital equipment. Together, Premier and Novation
11 negotiate contracts for \$34 billion in annual sales (not including VHA's other
12 company, HPPI, which has 8,000 members with \$8 billion in annual purchasing
13 power).
14

15 60. Medical device manufacturers, such as Defendants, have influenced
16 GPOs into becoming tools to help establish and entrench monopoly power in certain
17 medical device markets, including the market(s) for Relevant Endomechanical
18 Products.
19

20 61. The GPOs now are largely financed by the very suppliers – such as
21 Defendants – against whom the GPOs supposedly negotiate at arm's-length.
22 Suppliers, including Defendants, compensate GPOs in part based on the volume of
23 the suppliers' products that a GPO's members buy. Because Defendants sell
24 numerous different products to GPO members, Defendants pay GPOs millions of
25 dollars in administrative and other fees each year. As a result, Defendants exercise
26 significant influence and control over GPOs.
27

28 62. Because Defendants sell many different products (including sutures,
endomechanical products, and a variety of others) to GPO members, the GPOs can

1 potentially receive assorted fees that are equal to (and sometimes even above) 3% of
2 the price of those sales in administrative fees – often fees exceed millions of dollars.
3 However, Defendants decide for themselves what percentage (up to, or even over,
4 3%) to pay the GPOs. Concomitantly, Defendants can withhold and/or lower the fees
5 that the GPOs receive. This places Defendants in position to penalize GPOs that fail
6 to enact and enforce restrictions on dealing with Defendants’ rivals.
7

8 63. Because Defendants manufacture a large array of hospital products, a
9 GPO’s willingness or failure to favor Defendants’ competitors on one type of product
10 can potentially impact the amount of money the GPO receives in fees bundled on
11 dozens of Defendants’ products.

12 64. The cycle feeds itself: the more GPO members spend on Defendants’
13 products, the more money the GPOs have at stake in their relationship with
14 Defendants, the greater the potential penalties that Defendants can impose for non-
15 compliance with contractual provisions, and thus the more influence Defendants have
16 over the GPOs and their members.

17 65. Upon information and belief, Defendants have used their massive
18 economic power to award higher fees to those GPOs that enact policies favoring
19 Defendants and excluding rivals, such as contracts making the Defendants the “sole
20 source” for Relevant Endomechanical Products. Defendants also threaten to penalize
21 those GPOs that enact policies that challenge Defendants’ monopoly power in the
22 market(s) for Relevant Endomechanical Products.
23

24 **E. Defendants Have Leveraged Their Monopoly Power to Suppress**
25 **Competition in the Relevant Endomechanical Product Market(s)**

26 66. Defendants have suppressed competition in the market(s) for Relevant
27 Endomechanical Products by bundling the sale of sutures, a product group that
28 Defendants have dominated for years in the United States, with Relevant

1 Endomechanical Products. Under Defendants' scheme, the only way for a health care
2 entity to avoid massive price penalties on sutures is to purchase nearly all (or a very
3 high percentage or "share") of its Relevant Endomechanical Product requirements
4 from Defendants.

5 67. Defendants have used the GPOs to enact and enforce a variety of other
6 exclusionary provisions, including contracts making Defendants GPO members'
7 "sole source" for Relevant Endomechanical Products. By operation of these
8 provisions, should GPO members purchase even relatively small amounts of their
9 Relevant Endomechanical Product requirements from any of Defendants' rivals, such
10 purchasers would face severe financial penalties on their purchases of Relevant
11 Endomechanical Products *and* their purchases of sutures.

12 68. Defendants designed these exclusivity provisions as a means: (a) to
13 frustrate and to impair their Relevant Endomechanical Product rivals from competing
14 for customers, and thus to maintain and enhance monopoly power; and (b) to charge
15 higher combined prices immediately through forced bundling.

16 69. Defendants dominate the estimated \$1 billion market for the sale of
17 sutures in the U.S. Hospitals have high dollar volume needs for sutures and purchase
18 large quantities annually. Due to the monopoly power that Defendants possess with
19 respect to sutures, and the perceived uniqueness and quality of certain of Defendants'
20 sutures, health care entities cannot, as a practical matter, effectuate a whole-scale
21 switch to using rivals' sutures. Health care entities thus must buy a substantial
22 portion of their sutures from Defendants. By threatening massive penalties on all of
23 a health care entity's suture purchases if that entity buys even a small amount of a
24 rival's Relevant Endomechanical Products, Defendants frustrate and impair rival
25 Relevant Endomechanical Product manufacturers from competing for customers.
26
27
28

1 70. Defendants thus gained and maintained market share and market
2 dominance in the market(s) for Relevant Endomechanical Products by bundling the
3 sale of sutures with the sale of Relevant Endomechanical Products. Under
4 Defendants' scheme, hospitals and other health care entities must purchase high
5 percentages of their suture and Relevant Endomechanical Product requirements from
6 Defendants in order to avoid penalties on *all* of these products.
7

8 71. Defendants have, for instance, imposed "market share" agreements that
9 condition the avoidance of massive penalties on all of a health care entity's suture and
10 Relevant Endomechanical Product purchases on buying a high percentage (all or
11 nearly all) of these products from Defendants. Such penalties can be couched in
12 terms of foregone "rebates" or "discounts" off of the list price. Any such foregone
13 "rebate" or "discount" is effectively a steep penalty that the Defendants threaten to
14 impose on any purchaser who dares to buy from rivals.

15 72. Health care entities each purchase high volumes of sutures each year.
16 Due to Defendants' practices, health care entities are threatened with paying steep
17 penalty prices on *all* of the sutures they buy if they do not purchase a high percentage
18 of Relevant Endomechanical Products from Defendants. As a result, numerous health
19 care entities that would have otherwise have chosen to purchase material amounts of
20 Relevant Endomechanical Products from Defendants' actual or potential competitors
21 are forced to purchase at least 80% of their Relevant Endomechanical Products from
22 Defendants in order to avoid massive, bundled financial penalties on sutures.
23

24 73. For example, in order to avoid price penalties, health care entities are
25 required by Defendants' contracts with both Novation and Premier to agree to
26 purchase a minimum of 80% of their Relevant Endomechanical Products and 90% of
27 their sutures from Defendants. If a hospital or other health care entity fails to adhere
28 to these high market-share percentage requirements, then Defendants can impose

1 penalties in the form of substantially higher prices to the hospital not only on
2 Relevant Endomechanical Products but also on all sutures purchases. For health care
3 entities belonging to Premier, the price penalties that non-compliant hospitals would
4 face are massive – a 43% price increase on Relevant Endomechanical Products and
5 a 34% price increase on sutures. These potential price penalties act as a strong-arm
6 enforcement mechanism to enforce adherence to the exclusionary requirements.
7

8 74. Defendants even required purchasers to refrain from buying from
9 Defendants' rivals in order to avoid having to pay steep penalties on *past* purchases
10 made from Defendants. For example, under Defendants' contract with Premier, if a
11 health care entity fails to remain compliant, and instead purchases Relevant
12 Endomechanical Products from Defendants' rivals, that health care entity faces
13 massive penalties on current purchases and must also pay penalties avoided in the
14 past as well. Defendants' contract with Novation contains similar provisions.

15 75. As a result of these provisions, the potential penalties for buying
16 Relevant Endomechanical Products from rival manufacturers substantially increase
17 over time. Because a health care entity could incur penalties on past purchases for
18 all of the different unrelated products, the longer it continued to buy its suture and
19 Relevant Endomechanical Product needs from Defendants, the more the health care
20 entity could potentially be penalized by from deviating even slightly from the
21 compliance requirements that Defendants have imposed. Any health care entity that
22 wants to obtain less-expensive or technologically superior products from Defendants'
23 rivals would thus face massive penalties on all of its purchases of sutures and
24 Relevant Endomechanical Products.
25

26 76. Thus, Defendants impose significant financial penalties if health care
27 entities purchase even small quantities of Relevant Endomechanical Products from
28 rivals. Indeed, for rivals to win sales and gain substantial market share, they would

1 need to offset any threatened penalties not only on all or many Relevant
2 Endomechanical Products purchased, but any penalties threatened on all suture
3 purchases as well. This scheme creates an artificial barrier to rival entry and
4 expansion that clears the way for maintenance and enhancement of Defendants'
5 market dominance and monopoly power.

6
7 77. The penalties that Defendants impose, or threaten to impose, through
8 these bundling arrangements, frustrate and impair competition from rival suppliers
9 of Relevant Endomechanical Products. Many such rivals do not manufacture or sell
10 a full line of hospital products (most do not make sutures, for example), and
11 Defendants have no close rival in the U.S. market for sutures. Thus, actual and
12 potential rivals cannot offset the price penalties that buyers would face were these
13 purchasers to buy even a small fraction of their Relevant Endomechanical Products
14 from Defendants' rivals. In many cases, Defendants' rivals would have to offer their
15 Relevant Endomechanical Products to hospitals for free, or even pay hospitals and
16 other entities impossibly large bounties to take their products, simply to offset the
17 effects of Defendants' exclusionary practices. In effect, rivals are prevented from
18 competing head-to-head, product-to-product, on the basis of price and quality, and
19 are thereby prevented from growing market share and from challenging Defendants'
20 dominance. Defendants' conduct thus serves as a means to prevent free and fair
21 competition, enhance monopoly power, and artificially inflate prices.

22
23 78. In addition to bundling sutures with Relevant Endomechanical Products,
24 Defendants imposed additional anticompetitive contractual terms through GPOs. For
25 instance, Defendants bundled Relevant Endomechanical Products with other,
26 unrelated products from other, unaffiliated medical device manufacturers.
27 Defendants used various GPO programs to conspire with other manufacturers so that
28 a GPO member avoided a pricing penalty on other manufacturers' products only if the

1 health care entity complied with Defendants' Relevant Endomechanical Product high
2 market-share purchase requirements, *i.e.*, only if the purchaser fulfilled all or nearly
3 all of their requirements for these products from Defendants. Under this scheme, a
4 health care entity that chose to buy material amounts of Relevant Endomechanical
5 Products made by one of Defendants' rivals would risk massive penalties not merely
6 on Defendants' products, and not merely on Relevant Endomechanical Products and
7 sutures bought from Defendants, but also on *other* manufacturers' unrelated products
8 in other markets. This was (and is) a powerful means to exclude rivals.
9

10 79. Another means that Defendants used to impede competition was
11 penalizing hospitals and other health care entities that so much as tested or evaluated
12 rivals' competing Relevant Endomechanical Products. Simply evaluating a rival's
13 product could lead to significant financial penalties. Because health care entities will
14 not purchase products without evaluating them first (to determine efficacy and
15 reliability), this restriction closes an important avenue for Defendants' rivals to
16 compete for and/or win sales.

17 80. Indeed, because Defendants' contracts often prohibit health care entities
18 from evaluating competing products, many health care entities refuse even to meet
19 with rivals' sales representatives, or to consider their products at all, for fear of facing
20 massive financial penalties associated with violating such provisions.
21

22 81. In many instances, rivals could not even give products away for free in
23 the face of Defendants' scheme. For example, in an attempt to market and sell its
24 trocars and clip applicators, one rival, AMR, reportedly provided free samples of its
25 products to hospitals. The hospitals threw away the free trocars and clip applicators, not
26 because of quality concerns, but simply because they feared that acceptance of these
27 products would put them out of compliance with Defendants' contractual
28 requirements regarding the percentage of rivals' Relevant Endomechanical Products

1 they could buy or use, and thus lead to massive bundled price penalties. In this
2 example, AMR quite literally could not give its products away due to Defendants'
3 exclusionary contracts.

4 82. The bundled price penalties imposed by Defendants, discussed above,
5 together with Defendants' substantial market power and dominance in the market(s)
6 for Relevant Endomechanical Products, formed significant artificial barriers to entry
7 in the market(s) for Relevant Endomechanical Products (over and above any existing
8 natural barriers to entry). Although Genicon, AMR, Conmed, and other actual or
9 potential Relevant Endomechanical Products competitors are at least as efficient as
10 Defendants (or would have the capability of becoming so were they able to increase
11 their sales and achieve economies of scale), Defendants' bundled penalties and other
12 practices made it impossible for these rivals to compete for market share. By 1999,
13 the number of actual Relevant Endomechanical Product competitors had decreased
14 substantially. In addition, potential competitors have been discouraged from
15 investing in, researching, and developing competing products because of the artificial
16 barriers to entry which Defendants have erected and maintained.

17
18 83. Accordingly, through the threatened imposition of massive bundled price
19 penalties and other conduct described above, Defendants have frustrated and impaired
20 the ability of actual and potential competitors like Genicon, AMR, Conmed, and
21 others to compete for customers in the market(s) in which the Relevant
22 Endomechanical Products are sold, resulting in maintenance of monopoly power and
23 artificially inflated prices.

24
25 **F. The Anticompetitive Effects of Defendants' Conduct**

26 84. Defendants' conduct is anticompetitive because: (a) it raises rivals' costs
27 and frustrates and impairs the ability of rivals to compete in the market(s) for
28 Relevant Endomechanical Products; and (b) by bundling products over which

1 Defendants have considerable monopoly power and market dominance (sutures) with
2 Relevant Endomechanical Products, Defendants were able to extract higher combined
3 prices for the products in the bundle.

4 85. In addition, because Defendants use their contracts to injure and frustrate
5 competition, Defendants' monopoly power in the market(s) for Relevant
6 Endomechanical Products has been illegally maintained and enhanced. As alleged
7 above, GPOs represent an estimated 68-98% of the hospitals in the U.S. — a high
8 percentage of the potential market(s) for Relevant Endomechanical Products. In
9 addition, GPOs may constitute the most efficient means of distributing and marketing
10 Relevant Endomechanical Products. Through this scheme, Defendants are thus
11 foreclosing simultaneously one of the largest arenas of potential competition and the
12 most efficient means of distribution, raising rivals' costs and impairing rivals' ability
13 to compete.
14

15 86. The overall effect of Defendants' anticompetitive, exclusionary conduct
16 has been the artificial inflation of the prices of Relevant Endomechanical Products
17 above competitive levels, as a result of, among other things, the substantial market
18 foreclosure and impairment of competition from less expensive and/or
19 technologically and/or functionally superior Relevant Endomechanical Products.
20

21 87. Absent Defendants' misconduct, Defendants' rivals would have
22 increased their sales and gained market share in the market(s) for Relevant
23 Endomechanical Products, resulting in more competition, more innovation and
24 choice, and lower prices.

25 88. Additionally, absent Defendants' exclusionary conduct, barriers to entry
26 into each of the market(s) for Relevant Endomechanical Products would have been
27 lower, which: (a) would have made it easier for existing or new competitors to enter
28 or expand their market share; and (b) would have caused potential competitors to be

1 attracted to sell Relevant Endomechanical Products because of the supracompetitive
2 prices that Defendants were charging. As a result, absent Defendants' misconduct
3 and erection of artificial barriers to entry, Defendants would have been threatened by
4 potential and/or actual competitive entry, and/or expansion of rival sales, which
5 would have constrained and disciplined Defendants' pricing of Relevant
6 Endomechanical Products.

7
8 89. Moreover, had the ability of actual or potential Relevant
9 Endomechanical Product manufacturers to compete for customers not been frustrated
10 and impaired by Defendants' anticompetitive conduct, actual or potential competitors
11 would have sold substantially more of their products and gained much larger market
12 shares, enabling them to achieve economies of scale and scope. As Genicon, AMR,
13 ConMed, and other actual or potential competitors increased their sales and
14 increasingly achieved economies of scale, reduced their existing prices, and captured
15 greater amounts of Defendants' sales, Defendants would have experienced substantial
16 additional pressure to lower their own prices or face substantial and increasing losses
17 in sales.

18
19 90. Thus, absent Defendants' illegal conduct as alleged herein, unrestrained
20 competition from actual and/or potential competitors: (a) would have increased the
21 availability of Relevant Endomechanical Products that are less expensive than and/or
22 superior to Defendants' products, thereby promoting choice, greater innovation, and
23 enhanced consumer welfare; and (b) would have constrained the prices of all
24 Relevant Endomechanical Products.

25
26 91. Thus, by unlawfully excluding and impairing competition, and
27 independently through the act of imposing forced bundling itself, Defendants'
28 conduct has caused Plaintiffs and the other members of the Class to pay more for
Relevant Endomechanical Products than these purchasers otherwise would have paid.

1 92. There are no legitimate procompetitive justifications for Defendants'
2 conduct. Defendants' practices do not create or enhance efficiency, lower prices, or
3 increase output. Defendants' purpose for their conduct is to inflate combined prices,
4 raise rivals' costs, impair competition, and enhance monopoly power.

5 **G. Damages**

6 93. Plaintiffs and the other members of the Class purchased substantial
7 amounts of Relevant Endomechanical Products directly from Defendants. As a result
8 of Defendants' illegal conduct, Plaintiffs and other members of the Class were
9 compelled to pay, and did pay, artificially inflated prices for the Relevant
10 Endomechanical Products that they purchased.

11 94. Plaintiffs and other members of the Class would have been able to, *inter*
12 *alia*, purchase less-expensive Relevant Endomechanical Products had actual or
13 potential Relevant Endomechanical Product competitors (such as Genicon, AMR, or
14 Conmed) not been impaired and frustrated in competing for customers and market
15 share by Defendants' conduct, and had Defendants not imposed forced bundling in
16 this way.

17 95. The prices that Plaintiffs and the other Class members paid for Relevant
18 Endomechanical Products during the Class Period were substantially greater than the
19 prices that Plaintiffs and the Class members would have paid absent the illegal
20 conduct alleged herein because, *inter alia*: (1) the prices of Defendants' Relevant
21 Endomechanical Products were artificially inflated by Defendants' illegal conduct;
22 (2) members of the Class were deprived of the opportunity to purchase rival Relevant
23 Endomechanical Products at substantially lower prices; and (3) as Defendants' rivals
24 obtained access to increasingly more customers, they would have grown more
25 efficient, achieved economies of scale, and would have offered their Relevant
26
27
28

1 Endomechanical Products at even lower prices. Members of the Class have, as a
2 consequence, sustained substantial losses and damage to their business and property
3 in the form of overcharges. The full amount of such overcharge damages will be
4 calculated after discovery and upon proof at trial.

5 VI. CLAIMS FOR RELIEF

6 COUNT I

7 Violation of Sherman Act § 2 - Monopolization

8
9 96. Plaintiffs incorporate by reference the allegations above as if fully set
10 forth herein.

11 97. Defendants have willfully acquired, maintained, and/or enhanced
12 monopoly power in the U.S. market(s) for the Relevant Mechanical Products in
13 violation of § 2 of the Sherman Act, 15 U.S.C. § 2.

14 98. Defendants possess monopoly power in all of the market(s) for Relevant
15 Endomechanical Products.

16 99. The Defendants' monopoly power in these markets (or this market) has
17 been achieved, maintained and enhanced by the willful and intentional exclusionary
18 scheme alleged above. This conduct imposed higher combined prices immediately,
19 raised rivals' costs, and excluded and/or frustrated actual and potential competition
20 for the Relevant Endomechanical Products.

21 100. There are no legitimate, procompetitive justifications for Defendants'
22 exclusionary and anticompetitive conduct. To the extent that Defendants claim to
23 have sought to achieve any legitimate business purposes through their conduct,
24 Defendants have not used the least restrictive means for doing so. Any claimed
25 procompetitive benefit is outweighed by anticompetitive harm, and any legitimate
26 business justifications are mere pretexts for illegal monopoly maintenance.
27
28

1 market(s); (c) maintaining prices at artificially high levels for Relevant
2 Endomechanical Products; and/or (d) otherwise reaping the benefits of their illegal
3 monopoly power and unreasonable restraints of trade. The anticompetitive effects of
4 Defendants' agreements far outweigh any conceivable procompetitive benefits or
5 justifications.

6 107. Plaintiffs and members of the Class were injured in their business or
7 property by Defendants' agreements. Specifically, Plaintiffs and members of the
8 Class have been forced to pay higher prices for Relevant Endomechanical Products
9 than they would have paid absent Defendants' unlawful conduct.
10

11 VII. RELIEF REQUESTED

12 108. Plaintiffs, on behalf of themselves and all others similarly situated,
13 respectfully requests that judgment be entered in its favor and against Defendants
14 (jointly and/or severally as appropriate), including:

- 15 a. three times actual damages, measured as overcharges, pursuant to 15
16 U.S.C. § 15;
- 17 b. certification of the Class as alleged herein;
- 18 c. costs of suit, including reasonable attorneys' fees;
- 19 d. pre-judgment and post-judgment interest at the maximum rate permitted
20 by law; and
- 21 e. such other relief to which Plaintiff and the Class may be entitled.
22

23 ///

24 ///


25 ///

1 **VIII. TRIAL BY JURY**

2 109. Trial by jury is demanded on all issues so triable.

3
4 Dated: September 5, 2006

Respectfully submitted,

5
6 
7 **KREINDLER & KREINDLER LLP**
8 Gretchen M. Nelson (112566)
9 707 Wilshire Boulevard, Suite 5070
10 Los Angeles, CA 90017
11 Telephone: (213) 622-6469
12 Facsimile: (213) 622-6019

Liaison Counsel for Direct Purchaser Class Plaintiffs

13 **BERGER & MONTAGUE, P.C.**
14 Daniel Berger
15 Eric L. Cramer
16 Daniel C. Simons
17 David F. Sorensen
18 Peter Kohn
19 1622 Locust Street
20 Philadelphia, PA 19103
21 Telephone: (215) 875-3000
22 Facsimile: (215) 875-4604

23 **COHEN, MILSTEIN, HAUSFELD & TOLL,**
24 **P.L.L.C.**
25 Michael D. Hausfeld
26 Richard A. Koffman
27 Christopher J. Cormier
28 1100 New York Avenue, N.W.
Suite 500 West
Washington, D.C. 20005
Telephone: (202) 408-4600
Facsimile: (202) 408-4699

Brent W. Landau
One South Broad Street
Suite 1850
Philadelphia, PA 19107
Telephone: (215) 825-4016
Facsimile: (215) 825-4001

Counsel for Direct Purchaser Class Plaintiffs

1 SCHIFFRIN & BARROWAY, LLP

2 Kendall S. Zylstra
3 Stephen P. Connolly
4 280 King of Prussia Road
5 Radnor, Pennsylvania 19087
6 Telephone: (610) 667-7706
7 Facsimile: (610) 667-7056

8 LAW OFFICES OF JOSHUA P. DAVIS

9 Joshua P. Davis
10 437 Valley Street
11 San Francisco CA 94131
12 Telephone: (415) 422-6223
13 Facsimile: (415) 422-6433

14 GARWIN, GERSTEIN & FISHER, L.L.P.

15 Bruce E. Gerstein
16 Barry Taus
17 Noah H. Silverman
18 1501 Broadway, Suite 1416
19 New York, New York 10036
20 Telephone: (212) 398-0055
21 Facsimile: (212) 764-6620

22 ODOM & DES ROCHES, L.L.P.

23 John Gregory Odom
24 Stuart E. Des Roches
25 Suite 2020, Poydras Center
26 650 Poydras Street
27 New Orleans, LA 70130
28 Telephone: (504) 522-0077
Facsimile: (504) 522-0078

PERCY, SMITH & FOOTE, L.L.P.

David P. Smith
720 Murray Street
P.O. Box 1632
Alexandria, LA 71309
Telephone: (318) 445-4480
Facsimile: (318) 487-1741

HANGLEY ARONCHICK SEGAL & PUDLIN

Steven D. Shadowen
30 N. Third St., Suite 700
Harrisburg, PA 17101
Telephone: (717) 364-1030
Facsimile: (717) 364-1020

27 ///

28 ///

1 BERGER SINGERMAN P.A.

2 Mitchell W. Berger
3 Rene D. Harrod
4 350 Las Olas, Suite 1000
5 Ft. Lauderdale, FL 33301
6 Telephone: (954) 525-9900
7 Facsimile: (954) 523-2872

8 KOZYAK TROPIN & THROCKMORTON, P.A.

9 Adam Moskowitz
10 2800 Wachovia Financial Center
11 200 South Biscayne Boulevard
12 Miami, Florida 33131-2335
13 Telephone: (305) 372-1800
14 Facsimile: (305) 372-3508

15 KAPLAN FOX & KILSHEIMER LLP

16 Robert N. Kaplan
17 805 Third Avenue
18 22nd Floor
19 New York, NY 10022
20 Telephone: (212) 687-1980
21 Facsimile: (212) 687-7714

22 THE FURTH FIRM, LLP

23 Michael P. Lehmann
24 Thomas P. Dove
25 Jon T. King
26 225 Bush Street
27 15th Floor
28 San Francisco, CA 94104
Telephone: (415) 433-2070
Facsimile: (415) 982-2076

Counsel for Plaintiffs and Proposed Class

1 SERVICE LIST

2 *In Re Endosurgical Products Antitrust Litigation*
3 *This Document Relates to All Actions*
4 SACV 05-8809 JVS (MLGx)

4 *Attorneys for Defendants*

5 SIDLEY AUSTIN LLP
6 Thomas Hanrahan
7 Michelle B. Goodman
8 555 West Fifth Street, Suite 4000
9 Los Angeles, CA 90013
10 Telephone: (213) 896-6000
11 Telecopier: (213) 896-6600
12 thanrahan@sidley.com

9 SIDLEY AUSTIN LLP
10 David C. Giardina
11 Bank One Plaza
12 One South Dearborn Street
13 Chicago, Illinois 60603
14 Telephone: 312-853-7000
15 Telecopier: 312-853-7036
16 dgiardina@sidley.com

14 *Attorneys for Plaintiff Delaware Valley Surgical Supply Co., Inc.*

15 KREINDLER & KREINDLER LLP
16 Gretchen M. Nelson (112566)
17 707 Wilshire Boulevard, Suite 5070
18 Los Angeles, CA 90017
19 Telephone: (213) 622-6469
20 Telecopier: (213) 622-6019
21 gnelson@kreindler.com

19 BERGER & MONTAGUE, P.C.
20 Daniel Berger
21 Eric L. Cramer
22 David F. Sorensen
23 Peter Kohn
24 1622 Locust Street
25 Philadelphia, PA 19103
26 Telephone: (215) 875-3000
27 Telecopier: (215) 875-4604
28 ecramer@bm.net

25 SCHIFFRIN & BARROWAY, LLP
26 Kendall S. Zylstra
27 Stephen P. Connolly
28 280 King of Prussia Road
Radnor, Pennsylvania 19087
Telephone: (610) 667-7706
Telecopier: (610) 667-7056

///

1 LAW OFFICES OF JOSHUA P. DAVIS
Joshua P. Davis
2 437 Valley Street
San Francisco CA 94131
3 Telephone: (415) 422-6223
Telecopier: (415) 422-6433
4
5 GARWIN, GERSTEIN & FISHER, L.L.P.
Bruce E. Gerstein
Barry Taus
6 Noah H. Silverman
1501 Broadway, Suite 1416
7 New York, New York 10036
Telephone: (212) 398-0055
8 Telecopier: (212) 764-6620
9
10 ODOM & DES ROCHES, L.L.P.
John Gregory Odom
Stuart E. Des Roches
Suite 2020, Poydras Center
11 650 Poydras Street
New Orleans, LA 70130
12 Telephone: (504) 522-0077
Telecopier: (504) 522-0078
13
14 PERCY, SMITH & FOOTE, L.L.P.
David P. Smith
720 Murray Street
15 P.O. Box 1632
Alexandria, LA 71309
16 Telephone: (318) 445-4480
Telecopier: (318) 487-1741
17
18 HANGLEY ARONCHICK SEGAL & PUDLIN
Steven D. Shadowen
30 N. Third St., Suite 700
19 Harrisburg, PA 17101
Telephone: (717) 364-1030
20 Telecopier: (717) 364-1020
21
22 BERGER SINGERMAN P.A.
Mitchell W. Berger
Rene D. Harrod
350 Las Olas, Suite 1000
23 Ft. Lauderdale, FL 33301
Telephone: (954) 525-9900
24 Telecopier: (954) 523-2872
25
26 KOZYAK TROPIN & THROCKMORTON, P.A.
Adam Moskowitz
2525 Ponce de Leon, Suite 900
Coral Gables, Florida 33134
27 Miami, Florida 33131-2335
Telephone: (305) 372-1800
28 Telecopier: (305) 372-3508

1 *Attorneys for Plaintiff Niagara Falls Memorial Medical Center*

2 KAPLAN FOX & KILSHEIMER LLP

3 Laurence D. King (206423)
4 Linda M. Fong (124232)
5 Lori S. Brody (150545)
6 11601 Wilshire Blvd., Suite 300
7 Los Angeles, CA 90025
8 Telephone: 310-439-6006
9 Telecopier: 310-439-6004
10 lking@kaplanfox.com
11 lfong@kaplanfox.com
12 lbrody@kaplanfox.com

8 KAPLAN FOX & KILSHEIMER LLP

9 Robert N. Kaplan
10 805 Third Avenue
11 22nd Floor
12 New York, New York 10022
13 Telephone: 212-687-1980
14 Telecopier: 212-687-7714
15 rkaplan@kaplanfox.com

12 COHEN, MILSTEIN, HAUSFELD & TOLL, P.L.L.C.

13 Michael D. Hausfeld
14 Richard Koffman
15 Christopher Cormier
16 1100 New York Avenue N.W.
17 Washington, D.C. 20005-3964
18 Telephone: 202-408-4600
19 Telecopier: 202-408-4699
20 mhausfeld@cmht.com
21 rkoffman@cmht.com
22 ccormier@cmht.com

18 COHEN, MILSTEIN, HAUSFELD & TOLL, P.L.L.C.

19 Linda P. Nussbaum
20 Steig D. Olson
21 150 East 52nd Street, 30th Floor
22 New York, New York 10022-6017
23 Telephone: 212-838-7797
24 Telecopier: 212-838-7745
25 lnussbaum@cmht.com
26 solson@cmht.com

23 COHEN, MILSTEIN, HAUSFELD & TOLL, P.L.L.C.

24 Brent Landau
25 One South Broad Street, Suite 1850
26 Philadelphia, PA 19107
27 Telephone: 215-825-4010
28 Telecopier: 215-825-4001
blandau@cmht.com

28 ///

1 **ARTHUR N. BAILEY & ASSOCIATES**

2 Arthur N. Bailey
3 111 West Second Street, Suite 4500
4 Jamestown, New York 14701
5 Telephone: 716-664-2967
6 Telecopier: 716-664-2983

7 **THE FURTH FIRM, LLP**

8 Michel P. Lehmann
9 Thomas P. Dove
10 Jon T. King
11 225 Bush Street, 15th Floor
12 San Francisco, CA 94104
13 Telephone: 415-433-2070
14 Telecopier: 415-982-2076
15 mplehmann@furth.com

16 *Attorneys for Plaintiff, Bamberg County Memorial Hospital & Nursing Center*

17 **BLECHER & COLLINS, P.C.**

18 Maxwell M. Blecher (26202)
19 515 South Figueroa Street, 17th Floor
20 Los Angeles, California 90071-3334
21 Telephone: 213-622-4222
22 Telecopier: 213-622-1656
23 mblecher@blechercollins.com

24 **NEXSEN PRUET, LLC**

25 Val H. Stieglitz
26 Russell T. Burke
27 David C. Eddy
28 Post Office Drawer 2426
29 Columbia, S.C. 29202
30 Telephone: 803-771-8900
31 Telecopier: 803-253-8277
32 vstieglitz@nexsenpruet.com
33 rburke@nexsenpruet.com
34 deddy@nexsenpruet.com

35 **MCGOWAN, HOOD, FELDER & JOHNSON**

36 Chad McGowan
37 John G. Felder, Jr.
38 3710 Landmark Drive, Suite 114
39 Columbia, South Carolina 29204
40 Telephone: 803-779-0100
41 Telecopier: 803-787-0750
42 cmcgowan@mcgowanhood.com
43 jfelder@mcgowanhood.com

44 **BALL & SCOTT**

45 W. Gordon Ball
46 Daniel R. Karon
47 550 West Main Street, Suite 601
48 Knoxville, Tennessee 37902
49 Telephone: 865-525-7028
50 Telecopier: 865-525-4679
51 gball@ballandscott.com