UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15 (d) OF THE
SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended
September 30, 2004

Commission File Number 0-16093

CONMED CORPORATION
(Exact name of the registrant as specified in its charter)

New York	**16-0977505**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
525 French Road, Utica, New York	**13502**
(Address of principal executive offices)	(Zip Code)

(315) 797-8375
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes |x| No |_|

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). Yes |x| No |_|

The number of shares outstanding of registrant's common stock, as of November 3, 2004 is 29,841,128 shares.

CONMED CORPORATION

QUARTERLY REPORT ON FORM 10-Q
FOR THE QUARTER ENDED SEPTEMBER 30, 2004

PART I FINANCIAL INFORMATION

PART II OTHER INFORMATION

PART I FINANCIAL INFORMATION
Item 1.

CONMED CORPORATION
CONSOLIDATED CONDENSED STATEMENTS OF INCOME
(Unaudited, in thousands except per share amounts)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2003	2004	2003	2004
Net sales	$ 120,747	$ 132,289	$ 363,321	$ 397,165
Cost of sales	57,516	64,802	173,303	190,605
Gross profit	63,231	67,487	190,018	206,560
Selling and administrative expense	38,596	42,719	115,094	128,921
Research and development expense	4,487	4,706	12,568	14,281
Write-off of purchased in-process research and development assets	—	13,700	7,900	13,700
Other expense (income), net	1,153	867	(3,195)	867
	44,236	61,992	132,367	157,769
Income from operations	18,995	5,495	57,651	48,791
Loss on early extinguishment of debt	—	—	8,078	—
Interest expense	3,829	3,189	15,228	9,053
Income before income taxes	15,166	2,306	34,345	39,738
Provision for income taxes	5,460	607	15,208	13,708
Net income	$ 9,706	$ 1,699	$ 19,137	$ 26,030
Per share data:				
Net Income				
Basic	$ .34	$ .06	$ .66	$ .88
Diluted	.33	.06	.66	.86
Weighted average common shares				
Basic	28,941	29,816	28,909	29,618
Diluted	29,391	30,347	29,190	30,241

See notes to consolidated condensed financial statements.

CONMED CORPORATION
CONSOLIDATED CONDENSED BALANCE SHEETS
(Unaudited, in thousands except share and per share amounts)

	December 31, 2003	September 30, 2004
ASSETS		
Current assets:		
Cash and cash equivalents	$ 5,986	$ 10,223
Accounts receivable, net	60,449	63,433
Inventories	120,945	130,743
Deferred income taxes	10,188	10,705
Prepaid expenses and other current assets	3,538	3,316
Total current assets	201,106	218,420
Property, plant and equipment, net	97,383	99,634
Goodwill	290,562	331,918
Other intangible assets, net	193,969	194,816
Other assets	22,038	20,687
Total assets	$ 805,058	$ 865,475
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Current portion of long-term debt	$ 4,143	$ 3,988
Accounts payable	18,320	21,330
Accrued compensation and benefits	10,685	8,492
Income taxes payable	10,877	6,221
Accrued interest	279	449
Other current liabilities	10,551	9,855
Total current liabilities	54,855	50,335
Long-term debt	260,448	285,995
Deferred income taxes	46,143	50,162
Other long-term liabilities	10,122	9,154
Total liabilities	371,568	395,646
Commitments and contingencies		
Shareholders' equity:		
Preferred stock, par value $.01 per share; authorized 500,000 shares; none outstanding	—	—
Common stock, par value $.01 per share; 100,000,000 shares authorized; 29,140,644 and 29,874,550 shares issued and outstanding in 2003 and 2004, respectively	291	299
Paid-in capital	237,076	248,155
Retained earnings	194,473	220,503
Accumulated other comprehensive income	2,069	1,291
Less 37,500 shares of common stock in treasury, at cost	(419)	(419)
Total shareholders' equity	433,490	469,829
Total liabilities and shareholders' equity	$ 805,058	$ 865,475

See notes to consolidated condensed financial statements.

CONMED CORPORATION
CONSOLIDATED CONDENSED STATEMENTS OF CASH FLOWS
(Unaudited, in thousands)

	Nine Months Ended September 30,	
	2003	**2004**
Cash flows from operating activities:		
Net income	$ 19,137	$ 26,030
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation	7,717	8,003
Amortization	10,516	11,826
Deferred income taxes	8,302	8,984
Pension settlement charge	2,839	—
Write-off of deferred financing costs	2,181	—
Write-off of purchased in-process research and development assets	7,900	13,700
Increase (decrease) in cash flows from changes in assets and liabilities:		
Accounts receivable	(2,162)	(178)
Sale of accounts receivable	2,000	(3,000)
Inventories	(8,588)	432
Accounts payable	(3,129)	2,976
Income taxes payable	2,642	(5,941)
Accrued compensation and benefits	(2,879)	(1,656)
Accrued interest	(2,190)	170
Other assets/liabilities, net	(5,625)	(3,405)
	19,524	31,911
Net cash provided by operating activities	38,661	57,941
Cash flows from investing activities:		
Payments related to business acquisitions, net of cash acquired	(52,307)	(80,000)
Purchases of property, plant, and equipment, net	(6,291)	(7,529)
Net cash used in investing activities	(58,598)	(87,529)
Cash flows from financing activities:		
Net proceeds from common stock issued under employee plans	1,255	9,818
Payments on debt	(136,437)	(24,608)
Proceeds of debt	160,000	50,000
Payments related to issuance of debt	(1,300)	(612)
Net cash provided by financing activities	23,518	34,598
Effect of exchange rate changes on cash and cash equivalents	1,915	(773)
Net increase in cash and cash equivalents	5,496	4,237
Cash and cash equivalents at beginning of period	5,626	5,986
Cash and cash equivalents at end of period	$ 11,122	$ 10,223

See notes to consolidated condensed financial statements.

CONMED CORPORATION
NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS
(Unaudited, in thousands except per share amounts)

Note 1 – Operations and Significant Accounting Policies

Organization and Operations

The accompanying consolidated condensed financial statements include the accounts of CONMED Corporation and its controlled subsidiaries ("CONMED", the "Company", "we" or "us"). All intercompany accounts and transactions have been eliminated. CONMED is a medical technology company specializing in instruments, implants and video equipment for arthroscopic sports medicine and powered surgical instruments, such as drills and saws, for orthopedic, otolaryngologic ("ENT"), neuro-surgery and other surgical specialties. We are a leading developer, manufacturer and supplier of radio frequency ("RF") electrosurgery systems used routinely to cut and cauterize tissue in nearly all types of surgical procedures worldwide, endosurgery products such as trocars, clip appliers, scissors and surgical staplers, and a full line of electrocardiogram ("ECG") electrodes for heart monitoring and other patient care products. We also offer integrated operating room systems and equipment. Our products are used in a variety of clinical settings, such as operating rooms, surgery centers, physicians' offices and hospitals.

CONMED conducts its business through four principal operating units, CONMED Patient Care, CONMED Endosurgery, CONMED Electrosurgery and Linvatec Corporation. All of our operating units have been aggregated into one business segment due to their similar economic characteristics, customer base, nature of products and services, procurement, manufacturing and distribution processes. Total Company performance is evaluated by our chief operating decision maker which has been identified as the President and Chief Operating Officer, who reviews operating results and makes resource allocation decisions. Therefore, all required information regarding segment revenues, profitability and total assets may be obtained from our consolidated condensed financial statements.

Certain prior year amounts have been reclassified to conform with the presentation used in 2004.

Stock-based Compensation

We account for our stock-based compensation plans under the recognition and measurement principles of Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees". No compensation expense has been recognized in the accompanying financial statements relative to our stock option plans. Pro forma information regarding net income and earnings per share is required by Statement of Financial Accounting Standards No. 123, "Accounting for Stock-Based Compensation" ("SFAS 123") and has been determined as if we had accounted for our employee stock options under the fair value method of that statement.

For purposes of the pro forma disclosures, the estimated fair value of the options is amortized to expense over the options' vesting period. The following table illustrates the effect on net earnings as if the fair value provisions of SFAS 123 had been applied to stock-based employee compensation:

	Three months ended September 30,		Nine months ended September 30,	
	2003	2004	2003	2004
Net income – as reported	$ 9,706	$ 1,699	$ 19,137	$ 26,030
Pro forma stock-based employee compensation expense, net of related income tax effect	(586)	(1,137)	(1,689)	(3,154)
Net income – pro forma	$ 9,120	$ 562	$ 17,448	$ 22,876
Earnings per share – as reported:				
Basic	$ .34	$ .06	$ .66	$ .88
Diluted	.33	.06	.66	.86
Earnings per share – pro forma:				
Basic	$ .32	$ .02	$ .60	$ .77
Diluted	.31	.02	.60	.76

Note 2 — Interim financial information

The accompanying unaudited consolidated condensed financial statements have been prepared in accordance with generally accepted accounting principles for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by generally accepted accounting principles for annual financial statements. In the opinion of management, all adjustments (consisting only of normal recurring accruals) considered necessary for a fair presentation have been included. Results for the period ended September 30, 2004 are not necessarily indicative of the results that may be expected for the year ending December 31, 2004.

The consolidated condensed financial statements and notes thereto should be read in conjunction with the financial statements and notes for the year-ended December 31, 2003 included in our Annual Report on Form 10-K.

Note 3 – Other comprehensive income

Comprehensive income (loss) consists of the following:

	Three months ended September 30,		Nine months ended September 30,	
	2003	2004	2003	2004
Net income	$ 9,706	$ 1,699	$ 19,137	$ 26,030
Other comprehensive income:				
Foreign currency translation adjustment	208	1,081	2,396	(632)
Cash flow hedging (net of income taxes)	191	—	846	(146)
Comprehensive income	$ 10,105	$ 2,780	$ 22,379	$ 25,252

Accumulated other comprehensive income (loss) consists of the following:

	Cumulative Translation Adjustments	Cash Flow Hedges	Accumulated Other Comprehensive Income
Balance, December 31, 2003	$ 1,923	$ 146	$ 2,069
Foreign currency translation adjustment	(632)	—	(632)
Cash flow hedging (net of income taxes)	—	(146)	(146)
Balance, September 30, 2004	$ 1,291	$ —	$ 1,291

Note 4 – Inventories

Inventories consist of the following:

	December 31, 2003	September 30, 2004
Raw materials	$ 35,352	$ 39,875
Work-in-process	14,583	15,529
Finished goods	71,010	75,339
Total	$ 120,945	$ 130,743

Note 5 – Earnings per share

We compute basic earnings per share ("basic EPS") by dividing net income by the weighted average number of common shares outstanding for the reporting period. Diluted earnings per share ("diluted EPS") gives effect to all dilutive potential shares outstanding resulting from employee stock options during the period. The following table sets forth the computation of basic and diluted earnings per share for the three and nine month periods ended September 30, 2003 and 2004.

	Three months ended September 30,		Nine months ended September 30,	
	2003	2004	2003	2004
Net income	$ 9,706	$ 1,699	$ 19,137	$ 26,030
Basic - weighted average shares outstanding	28,941	29,816	28,909	29,618
Effect of dilutive potential securities	450	531	281	623
Diluted - weighted average shares outstanding	29,391	30,347	29,190	30,241
Basic EPS	$ .34	$ .06	$ .66	$ .88
Diluted EPS	$ .33	$ .06	$ .66	$ .86

The shares used in the calculation of diluted EPS exclude options to purchase shares where the exercise price was greater than the average market price of common shares for the period. Such shares aggregated approximately 0.8 million and 0.1 million in the three and nine month periods ended September 30, 2004, respectively, and 0.9 million and 1.5 million in the three and nine month periods ended September 30, 2003, respectively.

Note 6 – Goodwill and other intangible assets

Changes in the net carrying amount of goodwill for the nine month period ended September 30, 2004 is as follows:

Balance as of January 1, 2004	$ 290,562
Goodwill acquired	41,007
Adjustments to goodwill resulting from business acquisitions finalized	116
Foreign currency translation	233
Balance as of September 30, 2004	$ 331,918

The goodwill of $38.0 million acquired during the nine month period ended September 30, 2004 was as a result of the Bard Endoscopic Technologies acquisition (See Note 13).

Other intangible assets consist of the following:

	December 31, 2003		September 30, 2004	
	Gross Carrying Amount	Accumulated Amortization	Gross Carrying Amount	Accumulated Amortization
Amortized intangible assets:				
Customer relationships	$ 105,712	$ (15,447)	$ 105,712	$ (17,534)
Patents and other intangible assets	33,258	(16,498)	38,677	(18,983)
Unamortized intangible assets:				
Trademarks and tradenames	86,944	—	86,944	—
	$ 225,914	$ (31,945)	$ 231,333	$ (36,517)

Other intangible assets primarily represent allocations of purchase price to identifiable intangible assets of acquired businesses. As more fully described in Note 13, we are awaiting a third-party valuation to finalize the purchase price allocation and related amortization periods of certain identifiable intangible assets acquired as a result of the Bard Endoscopic Technologies acquisition. The weighted average amortization period for intangible assets which are amortized is 22 years. Customer relationships are being amortized over 38 years. Patents and other intangible assets are being amortized over a weighted average life of 9 years.

Amortization expense related to intangible assets which are subject to amortization totaled $1,620 and $4,572 in the three and nine month periods ended September 30, 2004, respectively, and $1,271 and $4,165 in the three and nine month periods ended September 30, 2003, respectively. These amounts have been included in selling and administrative expense on the consolidated condensed statement of income.

The estimated amortization expense for the year ending December 31, 2004, including the nine month period ended September 30, 2004 and for each of the five succeeding years is as follows:

2004	$6,173
2005	5,119
2006	4,716
2007	4,654
2008	4,136
2009	4,133

We perform annual impairment tests of goodwill and indefinite-lived intangible assets and evaluate the useful lives of acquired intangible assets subject to amortization. These tests and evaluations are performed in accordance with Statement of Financial Accounting Standards No. 142, "Goodwill and Other Intangible Assets." It is our policy to perform annual impairment tests in the fourth quarter.

Note 7 – Guarantees

We provide warranties on certain of our products at the time of sale. The standard warranty period for our capital and reusable equipment is generally one year. Liability under service and warranty policies is based upon a review of historical warranty and service claim experience. Adjustments are made to accruals as claim data and historical experience warrant.

Changes in the carrying amount of service and product warranties for the nine months ended September 30, 2004 are as follows:

Balance as of January 1, 2004	$ 3,588
Provision for warranties	3,022
Claims made	(3,092)
Balance as of September 30, 2004	$ 3,518

Note 8 – Pension Plan

The following table presents the components of net periodic pension cost for the three and nine month periods ended September 30, 2003 and 2004:

	Three months ended September 30,		Nine months ended September 30,	
	2003	2004	2003	2004
Service cost	$ 1,042	$ 205	$ 3,126	$ 2,343
Interest cost on projected benefit obligation	605	122	1,815	1,390
Expected return on plan assets	(432)	(128)	(1,296)	(1,458)
Net amortization and deferral	188	39	564	439
Net periodic pension cost	$ 1,403	$ 238	$ 4,209	$ 2,714

No pension funding has been made during the three and nine month periods ended September 30, 2004. There is no minimum required pension contribution for 2004 and the Company does not expect to make a discretionary contribution in 2004.

Note 9 – Legal Proceedings

From time to time, we are a defendant in certain lawsuits alleging product liability, patent infringement, or other claims incurred in the ordinary course of business. These claims are generally covered by various insurance policies, subject to certain deductible amounts and maximum policy limits. When there is no insurance coverage, as would typically be the case primarily in lawsuits alleging patent infringement, we establish sufficient reserves to cover probable losses, if any, associated with such claims. We do not expect that the resolution of any pending claims will have a material adverse effect on our financial condition or results of operations. There can be no assurance, however, that future claims, the costs associated with claims, especially claims not covered by insurance, will not have a material adverse effect on our future performance.

Manufacturers of medical products may face exposure to significant product liability claims. To date, we have not experienced any material product liability claims, but any such claims arising in the future could have a material adverse effect on our business or results of operations. We currently maintain commercial product liability insurance of $25 million per incident and $25 million in the aggregate annually, which we believe is adequate. This coverage is on a claims-made basis. There can be no assurance that claims will not exceed insurance coverage or that such insurance will be available in the future at a reasonable cost to us.

Our operations are subject to a number of environmental laws and regulations governing, among other things, air emissions, wastewater discharges, the use, handling and disposal of hazardous substances and wastes, soil and groundwater remediation and employee health and safety. In some jurisdictions environmental requirements may become more stringent in the future. In the United States certain environmental laws can impose liability for the entire cost of site restoration upon each of the parties that may have contributed to conditions at the site regardless of fault or the lawfulness of the party's activities. While we do not believe that the present costs of environmental compliance and remediation are material, there can be no assurance that future compliance or remedial obligations could not have a material adverse effect on our financial condition or results of operations.

In November 2003, we commenced litigation against Johnson & Johnson and several of its subsidiaries, including Ethicon, Inc., for violation of federal and state antitrust laws. The lawsuit claims that Johnson & Johnson engaged in illegal and anticompetitive conduct with respect to sales of product used in endoscopic surgery, resulting in higher prices to consumers and the exclusion of competition. We have sought relief which includes an injunction restraining Johnson & Johnson from continuing its anticompetitive practice as well as receiving the maximum amount of damages allowed by law. Our claims against Johnson & Johnson are currently in the discovery stage. While we believe that our claims are well-grounded in fact and law, there can be no assurance that we will be successful in our claim. In addition, the costs associated with pursuing this claim may be material.

Note 10 – Other expense (income)

Other expense (income) consists of the following:

	Three months ended September 30,		Nine months ended September 30,	
	2003	2004	2003	2004
Gain on settlement of a contractual dispute, net of legal costs	$ —	$ —	$ (9,000)	—
Pension settlement costs	758	—	2,839	—
Acquisition-related costs	395	867	2,966	867
Other expense (income)	$ 1,153	$ 867	$ (3,195)	$ 867

During the quarterly period ended March 31, 2003, we entered into an agreement with Bristol-Myers Squibb Company ("BMS") and Zimmer, Inc., ("Zimmer") to settle a contractual dispute related to the 1997 sale by BMS and its then subsidiary, Zimmer, of Linvatec Corporation to CONMED Corporation. As a result of this agreement, BMS paid us $9.5 million in cash, which was recorded as a gain on the settlement of a contractual dispute, net of $0.5 million in legal costs.

During the quarterly period ended June 30, 2003, we announced a plan to restructure our orthopedic sales force as part of our integration plan for the March 10, 2003 acquisition of Bionx Implants, Inc. (the "Bionx acquisition"). As a result of this orthopedic sales force restructuring, we incurred expenses in the amount of $0.8 million and $2.8 million, during the three and nine month periods ended September 30, 2003, respectively, associated with the settlement of losses on pension obligations, pursuant to Statement of Financial Accounting Standards No. 88, "Employer's Accounting for Settlements and Curtailments of Defined Benefit Pension Plans and for Terminated Benefits".

During the three and nine month periods ended September 30, 2003, we incurred approximately $0.4 million and $3.0 million, respectively, in acquisition and transition expenses related primarily to the December 31, 2002 acquisition of CORE Dynamics, Inc. (the "CORE acquisition") and the Bionx acquisition. These amounts consisted primarily of retention bonuses, severance and other expenses to unwind CORE operations in Jacksonville, Florida and Bionx operations in Blue Bell, Pennsylvania.

Included in other expense for the three and nine month periods ended September 30, 2004 are $0.9 million of costs related primarily to the Bard Endoscopic Technologies acquisition (See Note 13).

N*ote 11 – Shareholders' equity*

During the nine month period ending September 30, 2004, we issued 0.7 million additional shares of common stock under our stock option plans and employee stock purchase plans. This issuance of common stock resulted in an $11.1 million increase in Paid-in capital.

Note 12 – Write-off of Purchased In-Process Research and Development Assets

As disclosed in our Annual Report on Form 10-K for the year-ended December 31, 2003, we wrote-off $7.9 million of purchased in-process research and development assets ("IPRD") during the nine month period ended September 30, 2003. These assets were acquired in connection with the Bionx acquisition and are not deductible for income tax purposes.

As more fully described in Note 13, during the three and nine month periods ended September 30, 2004 we wrote-off $13.7 million of tax-deductible purchased in-process research and development assets acquired in connection with the Bard Endoscopic Technologies acquisition.

Note 13 – Business acquisition

On September 30, 2004 we acquired the business operations of the Endoscopic Technologies Division of C.R. Bard, Inc. (the "Seller")(the "Bard Endoscopic Technologies acquisition") for aggregate consideration of $80 million (subject to adjustment), consisting of $30 million in cash with $50 million in additional funds drawn under our revolving credit facility (See – "Liquidity and Capital Resources"). The acquired business included various tangible and intangible assets associated with a comprehensive line of single-use medical devices employed by gastro-intestinal and pulmonary physicians to diagnose and treat diseases of the digestive tract and lungs using minimally invasive endoscopic techniques. The acquired business operations had 2003 revenues approximating $54 million and is the third largest domestic supplier of these products to the market.

Manufacturing of the products is currently being conducted in various C.R. Bard facilities under a transition agreement. It is anticipated that future manufacturing will be shifted to our facilities over a six to nine month period.

The following unaudited pro forma information for the three and nine month periods ended September 30, 2003 and 2004 presents our results of operations as if the Bard acquisition had occurred at the beginning of the respective periods. These pro forma results of operations have been prepared for comparative purposes only and do not purport to be indicative of the results of operations which actually would have resulted had the Bard Endoscopic Technologies acquisition occurred on the date indicated, or which may result in the future.

	Three months ended September 30,		Nine months ended September 30,	
	2003	2004	2003	2004
Net sales	$134,305	$ 147,309	$402,903	$443,343
Net income	8,989	2,130	17,057	26,074
Net income per share				
Basic	$ .31	$ .07	$ .59	$ .88
Diluted	.31	.07	.58	.86

The following table summarizes the estimated fair values of the assets acquired and liabilities assumed at the date of acquisition. We are presently in the process of obtaining a third-party valuation of certain of the intangible assets aquired from Bard Endoscopic Technologies; thus the allocation of purchase price among goodwill, purchased in-process research and development, intangible assets not subject to amortization and intangible assets subject to amortization as well as determination of their related amortization periods, have not yet been finalized and are therefore subject to adjustment in future periods. Additionally, the cost of the Bard Endoscopic Technologies acquisition may require adjustment based upon information which is not currently available, principally related to the finalization of certain employee severance costs and the valuation of inventory. Goodwill and identifiable intangible assets associated with the Bard Endoscopic Technologies acquisition are deductible for income tax purposes.

Inventory and other current assets	$ 15,350
Property, plant and equipment	2,827
Identifiable intangible assets	4,903
In-process research and development	13,700
Deferred income taxes	4,795
Goodwill	41,007
Total assets acquired	82,582
Current liabilities assumed	(2,582)
Net assets acquired	$ 80,000

Based on a preliminary third-party valuation, $13.7 million of the purchase price represents the estimated fair value of development-stage projects which, as of the acquisition date had not reached technological feasibility and had no alternative future use. Accordingly, this amount of purchased in-process research and development assets was written-off in accordance with FASB Interpretation No. 4, “Applicability of FASB Statement No. 2 to Business Combinations Accounted for by the Purchase Method”. The $13.7 million write-off of purchased in-process research and development assets during the three month period ended September 30, 2004 is deductible for income tax purposes.

Approximately 62% of the aggregate purchased in-process research and development value relates to next generation gastro-intestinal products, which are expected to be released between the fourth quarter of 2005 and second quarter of 2006. The remaining two acquired projects include enhancements and upgrades to existing device technology, introduction of new device functionality and the development of new technology for gastro-intestinal applications.

The value of the in-process research and development was calculated using a discounted cash flow analysis of the anticipated net cash flow stream associated with the in-process technology of the related product sales. The estimated net cash flows were discounted using a discount rate of 17%, which was based on the weighted-average cost of capital for publicly-traded companies within the medical device industry and adjusted for the stage of completion of each of the in-process research and development projects. The risk and return considerations surrounding the stage of completion were based on costs, man-hours and complexity of the work completed versus to be completed and other risks associated with achieving technological feasibility. In total, these projects were approximately 40% complete as of the acquisition date. The total budgeted costs for the projects were approximately $8.5 million and the remaining costs to complete these projects were approximately $5.0 million as of the acquisition date.

The major risks and uncertainties associated with the timely and successful completion of these projects consist of the ability to confirm the safety and efficacy of the technologies and products based on the data from clinical trials and obtaining the necessary regulatory approvals. In addition, no assurance can be given that the underlying assumptions used to forecast the cash flows or the timely and successful completion of such projects will materialize, as estimated. For these reasons, among others, actual results may vary significantly from estimated results.

The $4.9 million of acquired identifiable intangible assets consists primarily of trademarks and patents. We are awaiting a third-party valuation to finalize the fair value indications associated with the purchase price allocation of identifiable intangible assets, as well as their related amortization periods.

Note 14 – New Accounting Pronouncements

In January 2003, the Financial Accounting Standards Board (“FASB”) issued FASB Interpretation No. 46 (“FIN 46”), “Consolidation of Variable Interest Entities, and Interpretation of ARB No. 151,” which requires variable interest entities (“VIE”) to be consolidated if the equity investment at risk is not sufficient to permit an entity to finance its activities without support from other parties or the equity investors lack certain specified characteristics. In December 2003, the FASB completed deliberations on proposed modifications to FIN 46 and reissued FIN 46(R) resulting in multiple effective dates based on the nature as well as the creation date of the VIE. Adoption of this pronouncement has not had any material impact on our financial condition or results of operations during the nine month period ended September 30, 2004.

Note 15 – Subsequent event

On November 4, 2004, we announced an intended offering, in a private placement, $125 million in aggregate principal amount of 2.50% convertible senior subordinated notes due 2024. In addition, we have granted the initial purchasers a 13-day option to purchase up to an additional $25 million of 2.50% convertible senior subordinated notes.

The convertible notes will be subordinated unsecured obligations of the Company and will be convertible under certain circumstances into a combination of cash and common stock of the Company. In general, upon conversion, the holder of each note would receive the conversion value of the note payable in cash up to the principal amount of the note and common stock of the Company for the note's conversion value in excess of such principal amount.

The convertible notes will mature on November 15, 2024 and will not be redeemable by the Company prior to November 15, 2011. Holders of the convertible notes will be able to require that we repurchase some or all of the convertible notes on November 15, 2011, 2014 and 2019.

We intend to use approximately $90 million of the net proceeds from the offering to repay borrowings under our senior credit agreement and approximately $30 million of the remaining net proceeds to repurchase our common stock in privately negotiated transactions. Remaining proceeds not used to repay debt or repurchase shares will be used for working capital and general corporate purposes.

We have determined that the notes contain several embedded derivatives; however, we believe that the derivatives have a nominal value, if any, and as such would not have a material impact on our future earnings or financial position.

The convertible notes are being offered and sold only to qualified institutional buyers in accordance with Rule 144A under the Securities Act of 1933, as amended. The convertible notes and the underlying common stock issuable upon conversion have not been registered under the Securities Act or any applicable state securities laws and may not be offered or sold in the United States, absent registration or an applicable exemption from such registration requirements.

Item 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Forward-Looking Statements

In this Report on Form 10-Q, we make forward-looking statements about our financial condition, results of operations and business. Forward-looking statements are statements made by us concerning events that may or may not occur in the future. These statements may be made directly in this document or may be "incorporated by reference" from other documents. Such statements may be identified by the use of words such as "anticipates", "expects", "estimates", "projects", "intends" and "believes" and variations thereof and other terms of similar meaning.

Forward-Looking Statements are not Guarantees of Future Performance

Forward-looking statements involve known and unknown risks, uncertainties and other factors, including those which may cause our actual results, performance or achievements, or industry results, to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. Such factors include those identified under "Risk Factors" in our Annual Report on Form 10-K for the year-ended December 31, 2003 and the following, among others:

- general economic and business conditions;
- cyclical customer purchasing patterns due to budgetary and other constraints;
- changes in customer preferences;
- competition;
- changes in technology;
- the ability to evaluate, finance and integrate acquired businesses, products and companies;
- the introduction and acceptance of new products;
- changes in business strategy;
- the possibility that United States or foreign regulatory and/or administrative agencies may initiate enforcement actions against us or our distributors;
- future levels of indebtedness and capital spending;
- quality of our management and business abilities and the judgment of our personnel;
- the risk of litigation, especially patent litigation as well as the cost associated with patent and other litigation;
- changes in foreign exchange and interest rates;
- changes in regulatory requirements; and
- the availability, terms and deployment of capital.

See "Management's Discussion and Analysis of Financial Condition and Results of Operations" below and "Business" in our Annual Report on Form 10-K for the year-ended December 31, 2003 for a further discussion of these factors. You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date hereof. We do not undertake any obligation to publicly release any revisions to these forward-looking statements to reflect events or circumstances after the date of this Quarterly Report on Form 10-Q or to reflect the occurrence of unanticipated events.

Overview:

CONMED Corporation ("CONMED", the "Company", "we" or "us") is a medical technology company with five principal product lines. These product lines and the percentage of consolidated revenues associated with each, are as follows:

	Three months ended		Nine months ended	
	September 30,		September 30,	
	2003	2004	2003	2004
Arthroscopy	35.3%	38.5%	36.2%	37.8%
Powered Surgical Instruments	24.3	22.8	24.8	23.9
Patient Care	14.2	14.1	14.3	13.9
Electrosurgery	17.1	16.0	15.5	15.6
Endosurgery	9.1	8.6	9.2	8.8
Net Sales	100.0%	100.0%	100.0%	100.0%

A significant amount of our products are used in surgical procedures with approximately 73% of our revenues derived from the sale of disposable products. We manufacture substantially all of our products in facilities located in the United States. We market our products both domestically and internationally directly to customers and through distributors. International sales represent a significant portion of our business. During the nine month period ended September 30, 2004, sales to purchasers outside of the United States accounted for 35% of total net sales.

Business Environment, Opportunities and Challenges

The aging of the worldwide population along with lifestyle changes, continued cost containment pressures on healthcare systems and the desire of clinicians and administrators to use less invasive (or noninvasive) procedures are important trends which are driving the growth for our surgical and patient care products.

We have historically used strategic business acquisitions and exclusive distribution relationships to diversify our product offerings, increase our market share in certain product lines and realize economies of scale. In 2003 we made important progress in broadening our Arthroscopy product line with the acquisition of Bionx Implants, Inc. In January 2004, we announced an agreement with Dolphin Medical, Inc., a subsidiary of OSI Systems, Inc., under which we became the exclusive North American distributor for a full line of Dolphin pulse oximetry products. These products are included in our Patient Care product line. In March 2004, we announced a strategic co-marketing relationship with eTrauma® Corporation, a developer and manufacturer of picture archiving, digital communication systems and electronic medical records software. Through this partnership our integrated operating room product offerings include eTrauma's digital communications product.

On September 30, 2004 we completed the acquisition of certain products of the Endoscopic Technologies Division of C.R. Bard, Inc. The acquired product line consists of various disposable products used by gastroenterologists to diagnose and treat diseases of the digestive tract. Several of the products are used in conjunction with electrosurgical devices to cause hemostasis following the removal of diseased tissue. It is anticipated that these products will complement our current Electrosurgery product offerings. Manufacturing of the products is currently being conducted in various C.R. Bard facilities under a transition agreement. It is anticipated that future manufacturing will be shifted to our facilities over a six to nine month period.

Continued innovation and commercialization of new proprietary products and processes are essential elements of our long-term growth strategy. In March 2004, we unveiled fourteen new products at the American Academy of Orthopedic Surgeons Annual Meeting which will enhance our arthroscopy and powered instrument product offerings. Our reputation as an innovator is exemplified by these recent product introductions, which include an IM3300 progressive scan, enhanced definition, autoclavable camera; a PowerPro® pneumatic powered instrument system; shoulder suture and suture anchors; Arthroscopic shaver blades; a knee femoral screw; SmartNail® 2.4m bioresorbable nail; and the 10k™ pump fluid management system.

Our current research initiatives include the development of reflectance technology products. This technology permits non-invasive analysis of blood oxygen levels in clinical situations which previously could not be accomplished using traditional non-invasive techniques ("Pro2®"). We anticipate a 2005 product launch in the United States and Europe.

Additionally, in 2003 we acquired technology for a product referred to as Endotracheal Cardiac Output Monitor ("ECOM"). Our ECOM product offering is expected to replace catheter monitoring of cardiac output with a specially designed endotracheal tube which utilizes proprietary bio-impedance technology. A large portion of the marketing development of this product, as well as future product enhancements, will be conducted in our newly created research subsidiary in Israel. In June 2004, CONMED and our Israeli subsidiary were awarded a $1 million grant from the BIRD Foundation to assist in product development. We anticipate a 2005 product launch in the United States and Europe.

Certain of our products, particularly our line of surgical suction instruments, tubing and ECG electrodes, are more commodity in nature, with limited opportunity for product differentiation. These products compete in mature, price sensitive markets. As a result, while sales volumes have continued to increase we have experienced and expect that we will continue to experience pricing and margin pressures in these product lines. We believe that we may continue to profitably compete in these product lines by maintaining and improving our low cost manufacturing structure. In addition, we expect to continue to use cash generated from these low margin, low capital intensive products to invest in, improve and expand higher margin product lines.

Critical Accounting Estimates

Preparation of our financial statements requires us to make estimates and assumptions which affect the reported amounts of assets, liabilities, revenues and expenses. Note 1 to the consolidated financial statements in our Annual Report on Form 10-K for the year-ended December 31, 2003 describes significant accounting policies used in preparation of the consolidated financial statements. The most significant areas involving management judgments and estimates are described below and are considered by management to be critical to understanding the financial condition and results of operations of CONMED. There have been no significant changes in our critical accounting estimates during the third quarter of 2004.

Revenue Recognition

Revenue is recognized when title has been transferred to the customer, which is generally at the time of shipment. The following policies apply to our major categories of revenue transactions:

- Sales to customers are evidenced by firm purchase orders. Title and the risks and rewards of ownership are transferred to the customer when product is shipped. Payment by the customer is due under fixed payment terms.

- We place certain of our capital equipment with customers in return for commitments to purchase disposable products over time periods generally ranging from one to three years. In these circumstances, no revenue is recognized upon capital equipment shipment and we recognize revenue upon the disposable product shipment. The cost of the equipment is amortized over the term of the individual commitment agreements.

- Product returns are only accepted at the discretion of the Company and in accordance with our "Returned Goods Policy". Historically the level of product returns has not been significant. We accrue for sales returns, rebates and allowances based upon an analysis of historical customer returns and credits, rebates, discounts and current market conditions.

- The Company's terms of sale to customers generally do not include any obligations to perform future services. Limited warranties are generally provided for capital equipment sales and provisions for warranty are provided at the time of product shipment based upon an analysis of historical data.

- Amounts billed to customers related to shipping and handling are included in net sales. Shipping and handling costs are included in selling and administrative expense.

- We sell to a diversified base of customers around the world and, therefore, believe there is no material concentration of credit risk.

- We assess the risk of loss on accounts receivable and adjust the allowance for doubtful accounts based on this risk assessment. Historically, losses on accounts receivable have not been material. Management believes that the allowance for doubtful accounts of $1.2 million at September 30, 2004 is adequate to provide for probable losses resulting from accounts receivable.

Inventory Reserves

We maintain reserves for excess and obsolete inventory resulting from the inability to sell our products at prices in excess of current carrying costs. The markets in which we operate are highly competitive, with new products and surgical procedures introduced on an on-going basis. Such marketplace changes may result in our products becoming obsolete. We make estimates regarding the future recoverability of the costs of our products and record a provision for excess and obsolete inventories based on historical experience, expiration of sterilization dates and expected future trends. If actual product life cycles, product demand or acceptance of new product introductions are less favorable than projected by management, additional inventory write-downs may be required.

Business Acquisitions

We have a history of growth through acquisitions, including the Bionx acquisition in 2003 and the Bard Endoscopic Technologies acquisition in 2004. The assets and liabilities of acquired businesses are recorded under the purchase method of accounting at their estimated fair values as of the date of acquisition. Goodwill represents costs in excess of fair values assigned to the underlying net assets of acquired businesses. Other intangible assets primarily represent allocations of purchase price to identifiable intangible assets of acquired businesses. We have accumulated goodwill of $331.9 million and other intangible assets of $194.8 million at September 30, 2004.

In accordance with Statement of Financial Accounting Standards No. 142, “Goodwill and Other Intangible Assets,” (“SFAS 142”), goodwill and intangible assets deemed to have indefinite lives are not amortized, but are subject to at least annual impairment testing. The identification and measurement of goodwill impairment involves the estimation of the fair value of our business. The estimates of fair value are based on the best information available as of the date of the assessment, which primarily incorporate management assumptions about expected future cash flows and contemplate other valuation techniques. Future cash flows may be affected by changes in industry or market conditions or the rate and extent to which anticipated synergies or cost savings are realized with newly acquired entities.

Intangible assets with a finite life are amortized over the estimated useful life of the asset. Intangible assets which continue to be subject to amortization are also evaluated to determine whether events and circumstances warrant a revision to the remaining period of amortization. An intangible asset is determined to be impaired when estimated future cash flows indicate that the carrying amount of the asset may not be recoverable. Although no goodwill or other intangible asset impairment has been recorded to date, there can be no assurance that future impairment will not occur. It is our policy to perform annual impairment tests in the fourth quarter.

As disclosed in our Annual Report on Form 10-K for the year-ended December 31, 2003, significant estimates were made in the $7.9 million valuation of purchased in-process research and development assets acquired in connection the Bionx acquisition. During the nine month period ended September 30, 2003 we wrote-off the entire amount of these assets (See Note 12). In connection with the Bard Endoscopic Technologies acquisition, significant estimates were made in the $13.7 million valuation of purchased in-process research and development assets. During the three and nine month periods ended September 30, 2004 we wrote-off the entire amount of these assets (See Note 12). The purchased in-process research and development value relates to next generation gastro-intestinal products, which are expected to be released between the fourth quarter of 2005 and second quarter of 2006. The acquired projects include enhancements and upgrades to existing device technology, introduction of new device functionality and the development of new technology for gastro-intestinal applications.

The value of the in-process research and development was calculated using a discounted cash flow analysis of the anticipated net cash flow stream associated with the in-process technology of the related product sales. The estimated net cash flows were discounted using a discount rate of 17%, which was based on the weighted-average cost of capital for publicly-traded companies within the medical device industry and adjusted for the stage of completion of each of the in-process research and development projects. The risk and return considerations surrounding the stage of completion were based on costs, man-hours and complexity of the work completed versus to be completed and other risks associated with achieving technological feasibility. In total, these projects were approximately 40% complete as of the acquisition date. The total budgeted costs for the projects were approximately $8.5 million and the remaining costs to complete these projects were approximately $5.0 million as of the acquisition date.

The major risks and uncertainties associated with the timely and successful completion of these projects consist of the ability to confirm the safety and efficacy of the technologies and products based on the data from clinical trials and obtaining the necessary regulatory approvals. In addition, no assurance can be given that the underlying assumptions used to forecast the cash flows or the timely and successful completion of such projects will materialize, as estimated. For these reasons, among others, actual results may vary significantly from estimated results.

Pension Plan

We sponsor a defined benefit pension plan covering substantially all our employees. Overall benefit levels provided under the plan were reduced effective January 1, 2004. Major assumptions used in accounting for the plan include the discount rate, expected return on plan assets and rate of increase in employee compensation levels. Assumptions are determined based on Company data and appropriate market indicators, and are evaluated each year as of the plan's measurement date. A change in any of these assumptions would have an effect on net periodic pension costs reported in the consolidated financial statements.

As a result of lower market interest rates, we lowered the discount rate used in determining pension expense from 6.75% in 2003 to 6.25% in 2004. This decrease in the discount rate has the result of increasing pension expense in 2004 as compared to what it would otherwise be.

We have used an expected rate of return on pension plan assets of 8.0% for purposes of determining the net periodic pension benefit cost. In determining the expected return on pension plan assets, we consider the relative weighting of plan assets, the historical performance of total plan assets and individual asset classes and economic and other indicators of future performance. In addition, we consult with financial and investment management professionals in developing appropriate targeted rates of return.

As a result of funding the maximum deductible pension contributions in 2003, pension plan assets have increased substantially, which has resulted in higher expected returns and decreased pension expense in 2004.

Based on these and other factors, 2004 pension expense is estimated at approximately $3.6 million. Actual expense may vary significantly from this estimate. During the nine month period ended September 30, 2004 and 2003 we recorded $2.7 million and $4.2 million in pension expense, respectively.

Income Taxes

The recorded future tax benefit arising from net deductible temporary differences and tax carryforwards is approximately $15.5 million at September 30, 2004. Management believes that our earnings during the periods when the temporary differences become deductible will be sufficient to realize the related future income tax benefits.

We have established a valuation allowance to reflect the uncertainty of realizing the benefits of certain net operating loss carryforwards recognized in connection with the Bionx acquisition. In assessing the need for a valuation allowance, we estimate future taxable income, considering the feasibility of ongoing tax planning strategies and the realizability of tax loss carryforwards. Valuation allowances related to deferred tax assets may be impacted by changes in tax laws, changes to statutory tax rates and future taxable income levels. In the event we were to determine that we would not be able to realize all or a portion of our deferred tax assets in the future, we would reduce such amounts through a charge to income in the period that such determination was made.

Results of Operations

The following table presents, as a percentage of net sales, certain categories included in our consolidated statements of income for the periods indicated:

	Three months ended September 30,		Nine months ended September 30,	
	2003	2004	2003	2004
Net sales	100.0%	100.0%	100.0%	100.0%
Cost of sales	47.6	49.0	47.7	48.0
Gross profit	52.4	51.0	52.3	52.0
Selling and administrative expense	32.0	32.3	31.7	32.5
Research and development expense	3.7	3.5	3.5	3.6
Write-off of purchased IPRD	—	10.4	2.2	3.4
Other expense (income), net	1.0	0.7	(0.9)	0.2
Income from operations	15.7	4.1	15.8	12.3
Loss on early extinguishment of debt	—	—	2.2	—
Interest expense	3.2	2.4	4.2	2.3
Income before income taxes	12.5	1.7	9.4	10.0
Provision for income taxes	4.5	0.4	4.1	3.5
Net income	8.0%	1.3%	5.3%	6.5%

Three months ended September 30, 2004 compared to three months ended September 30, 2003

Sales for the quarterly period ended September 30, 2004 were $132.3 million, an increase of $11.6 million (9.6%) compared to sales of $120.7 million in the comparable 2003 period. Favorable foreign currency exchange rates accounted for $1.9 million of the above increase.

Arthroscopy sales, including integrated systems, increased $8.1 million (19.0%) in the quarterly period ended September 30, 2004 to $50.8 million from $42.7 million in the comparable 2003 period, principally as a result of increased sales of our procedure specific, shoulder repair and video imaging products for arthroscopy and general surgery.

Powered surgical instrument sales increased $0.9 million (3.1%) in the quarterly period ended September 30, 2004 to $30.2 million from $29.3 million in the comparable 2003 period, principally as a result of increased sales of our PowerPro® line of large bone instruments. This increase was partially offset by decreased sales of our small bone and specialty product offerings.

Patient care sales increased $1.6 million (9.4%) in the quarterly period ended September 30, 2004 to $18.7 million from $17.1 million in the comparable 2003 period, principally as a result of increased sales of our ECG electrodes, pulse oximetry monitoring devices, intravenous and other clinical care products.

Electrosurgery sales increased $0.6 million (2.9%) in the quarterly period ended September 30, 2004 to $21.2 million from $20.6 million in the comparable 2003 period, principally as a result of increased sales of our System 5000® electrosurgical generator.

Endosurgery sales increased $0.4 million (3.6%) in the quarterly period ended September 30, 2004 to $11.4 million from $11.0 million in the comparable 2003 period. This increase is due to increased sales of our various laparoscopic instrument products and systems.

Cost of sales increased to $64.8 million in the third quarter of 2004 as compared to $57.5 million in the same period a year ago principally as a result of increased sales volumes in our video imaging and Patient Care product lines as mentioned above. Gross profit margins decreased from 52.4% in the three months ended September 30, 2003 to 51.0% in the three months ended September 30, 2004. This decrease is principally due to a shift in product mix to lower margin video imaging and Patient care products.

Selling and administrative expense increased to $42.7 million in the third quarter of 2004 as compared to $38.6 million in the comparable 2003 period. This increase is primarily attributable to the transition to a larger, independent sales agent based sales force in our arthroscopy and powered surgical instrument product lines, increased legal expenses associated with the litigation against Johnson & Johnson, as discussed in Note 9, and increased expenses associated with our Sarbanes-Oxley compliance program. Selling and administrative expenses as a percentage of net sales increased from 32.0% in the third quarter of 2003 to 32.3% in the third quarter of 2004.

Research and development expense totaled $4.7 million in the third quarter of 2004 as compared to $4.5 million in the third quarter of 2003. This increase is principally as a result of research efforts focused on the development of our Pro2® reflectance pulse oximetry and ECOM devices. As a percentage of net sales, research and development expense decreased to 3.5% in the current quarter compared to 3.7% in the comparable 2003 period.

As discussed in Note 10 to the Consolidated Condensed Financial Statements, other expense in the three month period ended September 30, 2004 consisted of $0.9 million of costs related primarily to the Bard Endoscopic Technologies acquisition. Other expense in the three month period ended September 30, 2003 consisted of $0.8 million in pension settlement costs associated with the restructuring of our orthopedic sales force and $0.4 million in costs related primarily to the Bionx acquisition.

As discussed in Notes 12 and 13 to the Consolidated Condensed Financial Statements, during the three month period ended September 30, 2004 we wrote-off $13.7 million of tax-deductible purchased in-process research and development assets associated with the Bard Endoscopic Technologies acquisition.

Interest expense in the third quarter of 2004 was $3.2 million compared to $3.8 million in the comparable 2003 period. The decrease in interest expense is primarily as a result of lower total outstanding borrowings during the current quarter as compared to the same period a year ago and lower average interest rates on our borrowings (inclusive of the implicit finance charge on our accounts receivable sale facility). Our total outstanding borrowings have increased to $290.0 million at September 30, 2004 as compared to $280.9 million at September 30, 2003. The weighted average interest rates on our borrowings decreased to 4.49% for the three months ended September 30, 2004 as compared to 4.70% for the three months ended September 30, 2003.

A provision for income taxes has been recorded at an effective tax rate of 26% for the third quarter 2004 as compared to 36% for the third quarter of 2003. During the third quarter of 2004 we recorded an adjustment to our income tax rate which lowered the year-to-date effective tax rate, from 35% in the first six months of 2004 to 34.5%. This adjustment reflects an increase in the estimated benefit which we expect to derive in 2004 from the ETI income exclusion. A reconciliation of the United States statutory income tax rate to our effective tax rate is included in our Annual Report on Form 10-K for the year-ended December 31, 2003, Note 7 to the Consolidated Financial Statements.

Nine months ended September 30, 2004 compared to nine months ended September 30, 2003

Sales for the nine months ended September 30, 2004 were $397.2 million, an increase of $33.9 million (9.3%) compared to sales of $363.3 million in the comparable 2003 period. The Bionx acquisition accounted for $3.6 million of the above increase and favorable foreign currency exchange rates accounted for $7.5 million.

Arthroscopy sales, including integrated systems, increased $18.8 million (14.4%) in the nine months ended September 30, 2004 to $150.1 million from $131.3 million in the comparable 2003 period, principally as a result of increased sales of our procedure specific, knee reconstruction, soft tissue fixation and video imaging products for arthroscopy and general surgery.

Powered surgical instrument sales increased $5.1 million (5.7%) in the nine months ended September 30, 2004 to $95.1 million from $90.0 million in the comparable 2003 period, principally as a result of increased sales of our PowerPro® line of large bone instruments. This increase was partially offset by decreased sales of our small bone and specialty product offerings.

Patient care sales increased $3.0 million (5.8%) in the nine months ended September 30, 2004 to $55.1 million from $52.1 million in the comparable 2003 period, principally as a result of increased sales of our pulse oximetry monitoring devices, intravenous and other clinical care products.

Electrosurgery sales increased $5.7 million (10.1%) in the nine months ended September 30, 2004 to $62.0 million from $56.3 million in the comparable 2003 period, principally as a result of increased sales of our new System 5000® electrosurgical generator.

Endosurgery sales increased $1.3 million (3.9%) in the nine months ended September 30, 2004 to $34.9 million from $33.6 million in the comparable 2003 period. This increase is due to increased sales of our various laparoscopic instrument products and systems.

Cost of sales increased to $190.6 million in the nine months ended September 30, 2004 as compared to $173.3 million in the same period a year ago due to increased sales volumes in each of our principal product lines as mentioned above. During the nine months ended September 30, 2003 $0.7 million in acquisition related charges were included in cost of sales as a result of the step-up to fair value recorded relating to the sale of inventory acquired in the Bionx and CORE acquisitions. Gross profit margins decreased from 52.3% in the nine months ended September 30, 2003 to 52.0% in the nine months ended September 30, 2004.

Selling and administrative expense increased to $128.9 million in the nine months ended September 30, 2004 as compared to $115.1 million in the comparable 2003 period. This increase is primarily attributable to the transition to a larger, independent sales agent based sales force in our arthroscopy and powered surgical instrument product lines, increased legal expenses associated with the litigation against Johnson & Johnson, as discussed in Note 9, and increased expenses associated with our Sarbanes-Oxley compliance program. Selling and administrative expenses as a percentage of net sales increased from 31.7% in the nine month period ended September 30, 2003 to 32.5% in the nine month period ended September 30, 2004.

Research and development expense totaled $14.3 million in the nine months ended September 30, 2004 as compared to $12.6 million in the comparable 2003 period. Of this increase, $0.1 million relates to ongoing research and development related to the Bionx acquisition while $1.3 million is attributable to Pro2® reflectance pulse oximetry and ECOM product development. As a percentage of net sales, research and development expense increased to 3.6% in the nine months ended September 30, 2004 as compared to 3.5% in the comparable 2003 period.

As discussed in Note 10 to the Consolidated Condensed Financial Statements, other income in the nine month period ended September 30, 2003 consisted primarily of a $9.0 million net gain on the settlement of a contractual dispute, $2.8 million in pension settlement costs associated with the restructuring of our orthopedic sales force and $3.0 million in costs related primarily to the CORE Dynamics and Bionx acquisitions. Other expense in the nine month period ended September 30, 2004 consisted of $0.9 million in costs related primarily to the Bard Endoscopic Technologies acquisition.

As discussed in Note 12 to the Consolidated Condensed Financial Statements, during the nine month periods ended September 30, 2003 and 2004, we wrote-off $7.9 million and $13.7 million of purchased in-process research and development assets associated with the Bionx acquisition and the Bard Endoscopic Technologies acquisition, respectively.

During the nine months ended September 30, 2003 we repurchased $130.0 million of our 9% senior subordinated notes and recorded a loss on the early extinguishment of debt in the amount of $8.1 million. This amount represents premium and unamortized deferred financing costs associated with the purchase.

Interest expense during the nine month period ended September 30, 2004 was $9.1 million compared to $15.2 million in the nine month period ended September 30, 2003. The decrease in interest expense is primarily as a result of lower total outstanding borrowings during the current period as compared to the same period a year ago and lower average interest rates on our borrowings (inclusive of the implicit finance charge on our accounts receivable sale facility). This decrease in interest expense is also a consequence of the redemption of $130.0 million in 9% senior subordinated notes during the nine month period ended September 30, 2003. The weighted average interest rates on our borrowings decreased to 4.13% for the nine months ended September 30, 2004 as compared to 6.47% for the nine months ended September 30, 2003.

A provision for income taxes has been recorded at an effective tax rate of 34.5% for the nine month period ended September 30, 2004 and 44% for the nine month period ended September 30, 2003. The effective tax rate of 44% for the nine month period ended September 30, 2003 is significantly higher as a result of the non-deductibility for income tax purposes of the $7.9 million in-process research and development write-off recorded in conjunction with the Bionx acquisition. A reconciliation of the United States statutory income tax rate to our effective tax rate is included in our Annual Report on Form 10-K for the year-ended December 31, 2003, Note 7 to the Consolidated Financial Statements.

Liquidity and Capital Resources

Our liquidity needs arise primarily from capital investments, working capital requirements and payments on indebtedness under the senior credit agreement. We have historically met these liquidity requirements with funds generated from operations, including sales of accounts receivable and borrowings under our revolving credit facility. In addition, we use term borrowings, including borrowings under our senior credit agreement and borrowings under separate loan facilities, in the case of real property acquisitions, to finance our acquisitions. We also have the ability to issue debt through a private placement or public offering.

Operating cash flows

Our net working capital position was $168.1 million at September 30, 2004. Net cash provided by operating activities was $57.9 million and $38.7 million in the nine months ended September 30, 2004 and 2003, respectively.

Net cash provided by operating activities in the nine month period ended September 30, 2004 was favorably impacted by the following: depreciation, amortization, deferred income taxes; decreases in inventory; and increases in accounts payable and accrued interest, primarily related to the timing of the payment of these liabilities.

Net cash provided by operating activities in the nine month period ended September 30, 2004 was negatively impacted by the following: decreases in the sale of accounts receivable; decreases in income taxes payable and accrued compensation and benefits; and increases in accounts receivable.

Investing cash flows

Capital expenditures were $7.5 million and $6.3 million for the nine months ended September 30, 2004 and 2003, respectively. These capital expenditures represent the ongoing capital investment requirements of our business.

Cash flows from investing activities for the nine month period ended September 30, 2003 consisted of $52.3 million in payments related to business acquisitions, net of cash acquired, principally related to the Bionx acquisition. Investing cash flows for the nine month period ended September 30, 2004 consisted of $80.0 million in payments related to the Bard Endoscopic Technologies acquisition.

Financing cash flows

Financing activities during the nine month period ended September 30, 2004 consisted primarily of the repayment of $24.6 million in borrowings under the senior credit agreement and $50.0 million in borrowings under the revolving credit facility. These borrowings under the revolving credit facility were used to finance a portion of the purchase price of the Bard Endoscopic Technologies acquisition.

Our senior credit agreement consists of a $100 million revolving credit facility and a $260 million term loan. Amounts outstanding on the revolving credit facility as of September 30, 2004 were $50.0 million. As of September 30, 2004, the total amount outstanding on the term loan was $222.3 million. The term loan is scheduled to be repaid over a period of approximately 6 years, with scheduled principal payments of $2.6 million annually through December 2007 increasing to $60.3 million in 2008 and the remaining balance outstanding due in December 2009. We may be required, under certain circumstances, to make additional principal payments based on excess annual cash flow as defined in the senior credit agreement. Interest rates on the term facility and the revolving credit facility are at the London Interbank Offered Rate ("LIBOR") plus 2.25% (4.09% at September 30, 2004).

The senior credit agreement is collateralized by substantially all of our personal property and assets, except for our accounts receivable and related rights which have been sold in connection with our accounts receivable sales agreement. The senior credit agreement contains covenants and restrictions which, among other things, require maintenance of certain working capital levels and financial ratios, prohibit dividend payments and restrict the incurrence of certain indebtedness and other activities, including acquisitions and dispositions. The senior credit agreement contains a material adverse effect clause which could limit our ability to access additional funding under our senior credit agreement should a material adverse change in our business occur. We are also required, under certain circumstances, to make mandatory prepayments from net cash proceeds from any issue of equity and asset sales.

Our outstanding debt assumed in connection with the 2001 purchase of property in Largo, Florida utilized by our Linvatec subsidiary consists of a note bearing interest at 7.50% per annum with semiannual payments of principal and interest through June 2009 (the "Class A note"); and a note bearing interest at 8.25% per annum compounded semiannually through June 2009, after which semiannual payments of principal and interest will commence, continuing through June 2019 (the "Class C note"). The principal balances outstanding on the Class A note and Class C note aggregated $9.0 million and $8.0 million, respectively, at September 30, 2004. These loans are secured by our Largo, Florida property.

On September 23, 2004 we entered into a Second Amendment to the Amended and Restated Credit Agreement, dated as of June 30, 2003 among CONMED Corporation, JP Morgan Chase Bank and other financial institutions from time to time party thereto. This Amendment principally provided for the Bard Endoscopic Technologies acquisition and the issuance of convertible senior subordinated notes (See Discussion Below) as permitted subordinated indebtedness.

On November 4, 2004, we announced an intended offering, in a private placement, $125 million in aggregate principal amount of 2.50% convertible senior subordinated notes due 2024. In addition, we have granted the initial purchasers a 13-day option to purchase up to an additional $25 million of 2.50% convertible senior subordinated notes.

The convertible notes will be subordinated unsecured obligations of the Company and will be convertible under certain circumstances into a combination of cash and common stock of the Company. In general, upon conversion, the holder of each note would receive the conversion value of the note payable in cash up to the principal amount of the note and common stock of the Company for the note's conversion value in excess of such principal amount.

The convertible notes will mature on November 15, 2024 and will not be redeemable by the Company prior to November 15, 2011. Holders of the convertible notes will be able to require that we repurchase some or all of the convertible notes on November 15, 2011, 2014 and 2019.

We intend to use approximately $90 million of the net proceeds from the offering to repay borrowings under our senior credit agreement and approximately $30 million of the remaining net proceeds to repurchase our common stock in privately negotiated transactions. Remaining proceeds not used to repay debt or repurchase shares will be used for working capital and general corporate purposes.

We have determined that the notes contain several embedded derivatives; however, we believe that the derivatives have a nominal value, if any, and as such would not have a material impact on our future earnings or financial position.

The convertible notes are being offered and sold only to qualified institutional buyers in accordance with Rule 144A under the Securities Act of 1933, as amended. The convertible notes and the underlying common stock issuable upon conversion have not been registered under the Securities Act or any applicable state securities laws and may not be offered or sold in the United States, absent registration or an applicable exemption from such registration requirements.

Management believes that cash flow from operations, including accounts receivable sales, cash and cash equivalents on hand and available borrowing capacity under our senior credit agreement will be adequate to meet our anticipated operating working capital requirements, debt service and funding of planned capital expenditures in the foreseeable future (See Part I. Item 2. “Forward-Looking Statements”).

Off-Balance Sheet Arrangements

We have an accounts receivable sales agreement pursuant to which we and certain of our subsidiaries sell on an ongoing basis certain accounts receivable to CONMED Receivables Corporation (“CRC”), a wholly-owned, bankruptcy-remote, special-purpose subsidiary of CONMED Corporation. CRC may in turn sell up to an aggregate $50.0 million undivided percentage ownership interest in such receivables (the “asset interest”) to a commercial paper conduit. The accounts receivable sales agreement was amended and restated with substantially the same terms and conditions on October 23, 2003 but replaced the commercial paper conduit with a bank. The commercial paper conduit or the bank’s (the “purchaser”) share of collections on accounts receivable are calculated as defined in the accounts receivable sales agreement, as amended. Effectively, collections on the pool of receivables flow first to the purchaser and then to CRC, but to the extent that the purchaser’s share of collections may be less than the amount of the purchaser’s asset interest, there is no recourse to CONMED or CRC for such shortfall. For receivables which have been sold, CONMED Corporation and its subsidiaries retain collection and administrative responsibilities as agent for the purchaser. As of September 30, 2004, the undivided percentage ownership interest in receivables sold by CRC to the purchaser aggregated $41.0 million, which has been accounted for as a sale and reflected in the balance sheet as a reduction in accounts receivable. Expenses associated with the sale of accounts receivable, including the purchaser’s financing costs to purchase the accounts receivable were $0.7 million in the nine month period ended September 30, 2004 and are included in interest expense.

There are certain statistical ratios, primarily related to sales dilution and losses on accounts receivable, which must be calculated and maintained on the pool of receivables in order to continue selling to the purchaser. The pool of receivables is in compliance with these ratios. Management believes that additional accounts receivable arising in the normal course of business will be of sufficient quality and quantity to meet the requirements for sale under the accounts receivable sales agreement. In the event that new accounts receivable arising in the normal course of business do not qualify for sale, then collections on sold receivables will flow to the purchaser rather than being used to fund new receivable purchases. To the extent that such collections would not be available to CONMED in the form of new receivables purchases, we would need to access an alternate source of working capital, such as our $100 million revolving credit facility. Our accounts receivable sales agreement, as amended, also requires us to obtain a commitment (the “purchaser commitment”), on an annual basis, from the purchaser to fund the purchase of our accounts receivable. The purchaser commitment was amended effective October 20, 2004 whereby it was extended for an additional year under substantially the same terms and conditions.

Contractual Obligations

The following table summarizes our contractual obligations for the next five years and thereafter (amounts in thousands). There were no capital lease obligations as of September 30, 2004:

		Payments Due By Period			
	Total	Less than 1 Year	1-3 Years	3-5 Years	More than 5 years
Long-term debt	$ 289,983	$ 3,988	$ 58,483	$ 110,699	$ 116,813
Purchase obligations	58,795	58,448	331	16	--
Operating lease obligations	12,597	2,289	4,401	5,054	853
Total contractual obligations	$ 361,375	$ 64,725	$ 63,215	$ 115,769	$ 117,666

Item 4. Controls and Procedures

An evaluation of the effectiveness of the design and operation of the Company's disclosure controls and procedures was carried out under the supervision and with the participation of the Company's management, including the Chairman and Chief Executive Officer and the Vice President-Finance and Chief Financial Officer (the "Certifying Officers") as of September 30, 2004. Based on that evaluation, the Certifying Officers concluded that the Company's disclosure controls and procedures are effective to bring to the attention of the Company's management the relevant information necessary to permit an assessment of the need to disclose material developments and risks pertaining to the Company's business in its periodic filings with the Securities and Exchange Commission. There was no change in the Company's internal control over financial reporting during the quarter ended September 30, 2004 that materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

Section 404 of the Sarbanes-Oxley Act of 2002 requires that management document and test the internal controls over financial reporting and to assert in our Annual Report on Form 10-K for the year-ended December 31, 2004, whether the internal controls over financial reporting as of December 31, 2004 are effective. Any material weakness in internal controls over financial reporting existing at that date may preclude management from making a positive assertion. While management intends to complete its assessment of internal controls over financial reporting and to implement, document and test any required changes to correct any material weaknesses identified in order to make a positive assertion as to the effectiveness of internal controls over financial reporting, there can be no assurance that sufficient progress will be made in time to do so.

PART II OTHER INFORMATION

Item 1. Legal Proceedings

Reference is made to Item 3 of the Company's Annual Report on Form 10-K for the year-ended December 31, 2003 and to Note 9 of the Notes to Consolidated Condensed Financial Statements included in Part I of this Report for a description of certain legal matters.

Item 6. Exhibits and Reports on Form 8-K

Exhibits

Exhibit No.	Description of Exhibit
2.1	Asset Purchase Agreement, dated August 18, 2004 by and between CONMED Corporation and C.R. Bard, Inc. et al.
2.2	First Amendment to Asset Purchase Agreement, dated September 29, 2004 by and between CONMED Corporation and C.R. Bard, Inc. et al.
10.1	Second Amendment to Amended and Restated Credit Agreement, dated September 23, 2004, by and among CONMED Corporation, JP MorganChase Bank and other financial institutions from time to time party thereto.
10.2	Amendment No. 1, dated October 20, 2004 to the Amended and Restated Receivables Purchase Agreement, dated October 23, 2003, among CONMED ReceivablesCorporation, CONMED Corporation and Fleet Bank.
31.1	Certification of Eugene R. Corasanti pursuant to Rule 13a-14(a) or Rule 15d-14(a), of the Securities Exchange Act, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Robert D. Shallish, Jr. pursuant to Rule 13a-14(a) or Rule 15d-14(a), of the Securities Exchange Act, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of Eugene R. Corasanti and Robert D. Shallish, Jr. pursuant to 18 U.S.C. Section 1350, asa dopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

Reports on Form 8-K

On November 8, 2004, the Company filed a Report on Form 8-K furnishing as Exhibits 99.1 and 99.2 under Item 7.01, November 3 and November 4, 2004 press releases announcing that it had priced an offering, in private placement of $125 million in aggregate principal amount of convertible senior subordinated notes due 2024.

On October 22, 2004, the Company filed a Report on Form 8-K furnishing as Exhibit 99.1 under Item 2.02, an October 21, 2004 press release announcing financial results for the three and nine month periods ended September 30, 2004.

On October 6, 2004, the Company filed a Report on Form 8-K under Item 2.01 announcing that, effective September 30, 2004 it had completed the acquisition of certain products of the Endoscopic Technologies Division of C.R. Bard, Inc.

On August 23, 2004, the Company filed a Report on Form 8-K under Item 5 announcing that it had entered into an agreement to acquire certain products of the Endoscopic Technologies Division of C.R. Bard, Inc.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

CONMED CORPORATION
(Registrant)

Date: November 9, 2004

/s/ Robert D. Shallish, Jr.

Robert D. Shallish, Jr.
Vice President – Finance
(Principal Financial Officer)

Exhibit Index

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Exhibit 2.1

ASSET PURCHASE AGREEMENT

between

C. R. Bard, Inc.

and

ConMed Corporation

Dated as of August 18, 2004

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ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT, dated as of August 18, 2004, between C. R. Bard, Inc., a corporation organized and existing under the Laws of the State of New Jersey ("*Seller*"), and ConMed Corporation, a corporation organized and existing under the Laws of the State of New York ("*Buyer*"). All capitalized terms used herein but not defined previously are defined in Section 9.17.

Seller and its Subsidiaries are engaged in, among other things, the design and development, manufacture, production, marketing and sale of Endoscopic Gastrointestinal Products and Pulmonary Bronchoscopy Products as well as research related exclusively thereto (the "*Business*").

Seller and Buyer desire to enter into the other on-going and transitional arrangements contemplated hereby.

Upon the terms and subject to the conditions set forth herein, the parties hereto agree as follows:

ARTICLE I

PURCHASE AND SALE OF ASSETS

1.1. *Assets; Liabilities.*

(a) *Asset Purchase*. Except as otherwise provided in Section 1.1(b), upon the terms and subject to the conditions of this Agreement, at the Closing (or the French Closing in the case of Assets which are French Assets), Seller shall, or shall cause its Subsidiaries to, sell, convey, assign, transfer and deliver to Buyer and/or its Designees, and Buyer and/or its Designees shall purchase, acquire and accept from Seller or its Subsidiaries, as applicable, all of the Seller's and its Subsidiaries' right, title and interest as of the Closing Date (or the French Closing in the case of Assets which are French Assets) in and to all of the assets, wherever located, as set forth in clauses (i)-(ix) below, without duplication (such right, title and interest in and to such assets being sold, conveyed, assigned transferred and delivered to Buyer and/or its Designees referred to collectively as the "*Assets*"):

(i) the assets reflected on the Final Statement of Assets and Liabilities;

(ii) all packaging materials to the extent used or held for use exclusively in connection with the Business on the Closing Date (or the French Closing Date in the case of the foregoing to the extent that the foregoing is a French Asset);

(iii) to the extent transferable in accordance with applicable Laws, all records, data (whether in hard copy or computer form), customer lists, vendor lists and service provider lists used or held for use exclusively in connection with the Business on the Closing Date (or the French Closing Date in the case of the foregoing to the extent that the foregoing is a French Asset);

(iv) all equipment, furniture, furnishings, machinery, tools and other tangible personal property which are used exclusively in connection with the Business on the Closing Date (or the French Closing Date in the case of the foregoing to the extent that the foregoing is a French Asset) and all machinery, tools and equipment necessary for the manufacturing of the Products as manufactured on the Closing Date (or the French Closing Date in the case of the foregoing to the extent that the foregoing is a French Asset), including, with respect to such manufacturing equipment, machinery and tools, the related most current maintenance schedule and maintenance history;

(v) To the extent related to the Business on the Closing Date (or the French Closing Date in the case of the foregoing to the extent that the foregoing is a French Asset), Contracts to which Seller or one of its Subsidiaries is a party and which relate exclusively to the Endoscopic Technologies Division of Seller (subject to Section 4.4(c));

(vi) to the extent transferable, all licenses, permits, consents, approvals, authorizations, qualifications, orders or franchises issued by any Governmental Authority which relate exclusively to the Business on the Closing Date (or the French Closing Date in the case of the foregoing to the extent that the foregoing is a French Asset) (the "*Permits*");

(vii) subject to Section 4.8, the Intellectual Property used exclusively in the Business on the Closing Date (or the French Closing Date in the case of the foregoing to the extent that the foregoing is a French Asset), including the items specifically identified in *Schedule 1.1(a)(vii)* hereto, including, with respect to any trademarks or related rights, the goodwill of the Business appurtenant thereto or symbolized thereby ("*Transferred Intellectual Property*");

(viii) all research related exclusively to the Products as of the Closing Date (or the French Closing Date in the case of the foregoing to the extent that the foregoing is a French Asset); and

(ix) the other assets identified in *Schedule 1.1(a)(ix)*, except to the extent that any such assets have been disposed of not in violation of the provisions of Section 4.2 since the date of this Agreement.

(b) *Excluded Assets*. Notwithstanding any provision in this Agreement or the Ancillary Agreements, it is expressly understood and agreed that all of the Seller's and its Subsidiaries' right, title and interest as of the Closing Date in and to the following assets, properties, rights, goodwill, privileges, claims and contracts of every kind and nature, real personal and mixed, tangible or intangible, absolute or contingent (such right, title and interest being referred to herein as the "*Excluded Assets*") are specifically excepted from the Assets to be transferred to Buyer and/or its Designees pursuant to Section 1.1(a):

(i) all cash and cash equivalents or similar types of investments, including, without limitation, checking accounts, bank accounts, lock box numbers, marketable securities, commercial paper, certificates of deposit and other bank deposits and Treasury bills;

(ii) any refund, credit, adjustment or similar benefit (including, without limitation, interest thereon or claims therefore) with respect to any Taxes for any period prior to the Closing Date;

(iii) subject to Section 8.3(d)(i) hereof, all insurance policies of Seller and its Subsidiaries and all rights of Seller and its Subsidiaries of every nature and description under or arising out of such insurance policies;

(iv) all receivables (including without limitation, receivables relating to VAT, freight and duty) of Seller and its Subsidiaries and other rights to receive money, all security related thereto, deposits, prepaid charges, sums and fees, offsets, credits balances, refunds and causes of action and any claim, remedy or other right related to any of the foregoing;

(v) without limiting the licenses granted in Section 4.9, Section 4.10 or the License and Supply Agreements, all intellectual property of any kind that is not Transferred Intellectual Property;

(vi) without limiting the Sublease, all owned or leased real property (including buildings, structures and leasehold and other improvements located thereon, fixtures contained therein and appurtenances thereto);

(vii) all rights of Seller under this Agreement and the agreements and instruments delivered by Buyer or its Affiliates pursuant to or in connection with this Agreement;

(viii) assets relating to the Benefit Plans;

(ix) the Contracts listed on *Schedule 1.1(b)(ix);*

(x) machinery, tools and equipment that are (x) necessary for the manufacturing of the Products as manufactured on the Closing Date, (y) used less than exclusively in connection with the Business on the Closing Date and (z) used for packaging, testing or molding;

(xi) tools that are (x) necessary for the manufacturing of the Products as manufactured on the Closing Date, (y) used less than exclusively in connection with the Business on the Closing Date and (z) readily available at a price of one thousand dollars ($1,000.00) or less; and

(xii) the van located at Seller's Billerica Facility.

(c) *Assumed Liabilities*. Except as otherwise provided in Section 1.1(d), on the Closing Date (or in the case of Liabilities described in Section 1.1(c)(v), the French Closing Date), Buyer shall, or shall cause its Designees to, assume and agree to fully perform, pay and discharge when due, in accordance with the terms thereof, all Liabilities of Seller and its Subsidiaries set forth below (the "*Assumed Liabilities*"):

(i) Liabilities which are to be performed after the Closing Date (or, in the case of Contracts excluded from the Assets pursuant to Section 4.4(c), which are to be performed after the date such Contract is deemed to be assigned pursuant to Section 4.4(c)) under the Contracts which are Assets pursuant to Section 1.1(a)(v);

(ii) Liabilities reflected in the Final Statement of Assets and Liabilities;

(iii) Liabilities under the Permits transferred to Buyer and/or its Designees to the extent relating to periods after the Closing Date;

(iv) Liabilities which (A) are obligations undertaken under Article VII by the Buyer and/or its Designees, (B) arise out of or relate to any claims in respect of severance or termination of employment of any US Employee, Glens Falls Employee or UK Employee other than to the extent arising out of or relating to Seller's conduct of the Business (other than conduct contemplated by this Agreement or requested by Buyer) prior to the Closing (or the Relocation Date in the case of any Glens Falls Employee), (C) arise out of or relate to the failure by Buyer or its Designees to provide information and, where appropriate, enable consultation to take place in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 1981 or (D) arise out of or relate to any claims in respect of employees/worker's compensation or the employment of any Scheduled Employee or Glens Falls Employee arising as of or after the Closing Date (or the Relocation Date in the case of any Glens Falls Employee) or, if accrued on the Final Statement of Assets and Liabilities, arising before the Closing Date;

(v) Without limiting Seller's obligations under Section 8.1(b), any Liability which becomes a Liability of Buyer or any of its Affiliates by operation of Law or pursuant to the Partial Asset Sale Agreement;

(vi) all Liabilities, obligations or commitments for Taxes, including business and registration Taxes but excluding value added taxes arising out of the transfer of the manufacturing Assets located on the Closing Date at Seller's facility in Reynosa, Mexico, whether or not accrued, assessed or currently due and payable, relating to the operation or ownership of the Business for any period (or portion thereof in the case of a Straddle Period) that begins after the Closing Date (for purposes of this clause (vi), (A) all real property Taxes, personal and intangible property Taxes and similar ad valorem obligations levied with respect to the Business or the Assets for a taxable period that includes (but does not end on) the Closing Date (a "*Straddle Period*") shall be apportioned based on the number of days falling before and after the Closing Date, (B) all Taxes based upon or related to income and gross receipts, sales or use taxes shall be determined on the basis that the relevant taxable period ended on and included the Closing Date and (C) the portion of any refunds or credits relating to a Straddle Period shall be determined on the basis that the relevant taxable period ended on and included the Closing Date); and

(vii) Liabilities for all warranties and returns of products manufactured or distributed in connection with the Business.

(d) *Liabilities Not Assumed*. Notwithstanding any provision in this Agreement or the Ancillary Agreements, Buyer and its Designees shall not assume, shall not take subject to and shall not be liable for (and the Assumed Liabilities shall not include) the Liabilities as set forth below except to the extent that any such Liability becomes a Liability of Buyer or any of its Affiliates by operation of Law or pursuant to the Partial Asset Sale Agreement (the " *Excluded Liabilities*"):

(i) to the extent accrued on the Final Statement of Assets and Liabilities, any Liabilities arising out of or relating to the Excluded Assets;

(ii) all Liabilities resulting from any Legal Proceedings pending or, to the Knowledge of Seller, threatened as of the Closing Date and claims relating to any property damage, personal injury, death, product recall or other similar Liability arising out of products manufactured or distributed prior to the Closing Date (other than such Liabilities to the extent arising out of or resulting from the shipment, storage, handling or labeling (or any acts or omissions in respect thereof) of such products by Buyer, any of its Affiliates or any of their direct or indirect distributors or agents (not including Seller) after the Closing Date);

(iii) except as provided under Section 4.4(c), Liabilities arising under any Contract excluded from the Assets pursuant to Section 4.4(c) until such time as such contract or agreement is deemed to be assigned to Buyer and/or its Designees pursuant to Section 4.4(c);

(iv) any Liabilities, obligations or commitments for Taxes, whether or not accrued, assessed or currently due and payable, relating to the operation or ownership of the Business for any period (or portion thereof in the case of a Straddle Period) ending on or prior to the Closing Date (for purposes of this clause (iv), Taxes for a Straddle Period shall be apportioned in the manner described in Section 1.1(c)(vi) above); or

(v) any Liabilities in respect of the (x) Benefit Plans, (y) Scheduled Employees to the extent arising or accruing prior to the Closing Date and the Glens Falls Employees to the extent arising or accruing prior to the Relocation Date or (z) employees of the Business who are not Scheduled Employees or Glens Falls Employees to the extent arising or accruing prior to, on or after the Closing Date, except in the case of clause (x), (y) or (z), to the extent (I) assumed or undertaken in Article VII, (II) accrued on the Final Statement of Assets and Liabilities or (III) caused by or resulting from any act or omission by or on the part of Buyer or its Subsidiaries or Designees.

1.2. *Assumption of Liabilities; Purchase Price*. (a) Subject to adjustment as set forth in Section 1.3, upon the terms and conditions of this Agreement, on the Closing Date, in consideration for the sale and transfer of the Assets (excluding the French Assets), Buyer, or its Designees, as applicable, shall assume and fully perform, pay and discharge when due, the Assumed Liabilities (excluding the Assumed Liabilities described in Section 1.1(c)(v)) in accordance with the terms thereof and pay to, or to the order of, Seller by wire transfer in immediately available funds in U.S. dollars an amount equal to $80,000,000 (the "*Purchase Price*") in accordance with written instructions given by Seller to Buyer not less than five (5) business days prior to the Closing. The Purchase Price shall be allocated in accordance with the terms of Section 6.2 hereof.

(b) Upon the terms and conditions of this Agreement and the Partial Asset Sale Agreement, at the time of the French Closing, in consideration for the sale and transfer of the assets transferred pursuant to the Partial Sale Asset Agreement (the "*French Assets*") relating to the French portion of the Business (the "*French Business*"), Linvatec France S.A.R.L. shall assume and fully perform, pay and discharge when due, the Assumed Liabilities described in Section 1.1(c)(v) in accordance with the terms thereof and pay to, or to the order of, Bard France S.A.S. by wire transfer in immediately available funds in Euros an amount which Buyer and Seller shall agree prior to Closing (the "*French Purchase Price*") in accordance with written instructions given by Bard France S.A.S. to Linvatec France S.A.R.L. not less than five (5) business days prior to the French Closing. Concurrently therewith, Seller will pay to Buyer by wire transfer in immediately available funds in U.S. dollars the equivalent of the French Purchase Price at the U.S. dollar/Euro exchange rate as published on the second Business Day prior to the Closing Date in the *Wall Street Journal, Eastern Edition* (or the most recently published exchange rate published in the *Wall Street Journal, Eastern Edition* prior to such date if no such exchange rate is published on such date) in accordance with written instructions given by Seller to Buyer not less than five (5) business days prior to the French Closing. In the event that the French Closing shall occur subsequent to the Closing, the parties shall negotiate in good faith an amendment to this Agreement making such changes as are necessary or appropriate to preserve to the maximum extent possible the full benefits of this Agreement in light of the delayed transfer of the applicable Assets and Liabilities.

1.3. *Adjustment to Purchase Price*.

(a) *Preparation of Preliminary Closing Statement of Assets and Liabilities*. As soon as reasonably possible after the Closing Date (but not later than 60 days thereafter), Seller shall prepare or cause to be prepared, and deliver to Buyer at Seller's expense an unaudited special purpose statement of assets and Liabilities of the Business (including the French Business) dated as of the Closing Date (the "*Preliminary Closing Statement of Assets and Liabilities*"). The Preliminary Closing Statement of Assets and Liabilities, after giving effect to the transactions contemplated by this Agreement, shall be prepared on a basis consistent with, and reflecting the same line items as, the special purpose statement of assets and liabilities of the Business as of June 30, 2004, delivered by Seller to Buyer and attached as Exhibit A hereto (the "*Initial Statement of Assets and Liabilities*"), subject to the exceptions and such other matters as are set forth in *Schedule 1.3(a)* hereto, and shall disclose the book value of inventory less accounts payable and accrued expenses without further adjustment (the "*Special Net Book Value*") as of the Closing Date. Seller and its employees and advisors shall have full access upon reasonable notice and during normal business hours to the books, papers and records of Buyer and its Subsidiaries relating to the Business as necessary or helpful for the preparation of the Preliminary Closing Statement of Assets and Liabilities.

(b) *Review of Preliminary Closing Statement of Assets and Liabilities*. Buyer, upon receipt of the Preliminary Closing Statement of Assets and Liabilities, shall (i) review the Preliminary Closing Statement of Assets and Liabilities and (ii) to the extent Buyer may deem necessary, make reasonable inquiry of Seller relating to the preparation of the Preliminary Closing Statement of Assets and Liabilities. Buyer and its employees and advisors shall have full access upon prior written notice and during normal business hours to the books, papers and records of Seller and its Subsidiaries relating to the preparation of the Preliminary Closing Statement of Assets and Liabilities in connection with such inquiry. The Preliminary Closing Statement of Assets and Liabilities shall be binding and conclusive upon, and deemed accepted by, Buyer unless Buyer shall have notified Seller in writing of any objections thereto (the "*Buyer's Objection*") within 45 days after receipt of the Preliminary Closing Statement of Assets and Liabilities.

(c) *Disputes*. In the event of a Buyer's Objection, Seller shall have 45 days to review and respond to the Buyer's Objection, and Seller and Buyer shall attempt to resolve the differences underlying the Buyer's Objection within 45 days following completion of Seller's review of the Buyer's Objection. Disputes between Buyer and Seller which cannot be resolved by them within such 45-day period shall be referred promptly after such 45th day for decision to a nationally-recognized independent public accounting firm as Seller and Buyer shall mutually agree upon (which firm shall not be the independent auditors for either Seller or Buyer) (the "*Auditor*") who shall act as arbitrator and determine, based solely on presentations by Seller and Buyer and on the basis of the standards set forth in Section 1.3(a) hereof and only with respect to the remaining differences with respect to objections raised in the Buyer's Objection, whether and to what extent, if any, the Preliminary Closing Statement of Assets and Liabilities requires adjustment. The Auditor shall deliver its written determination, including, without limitation, as to the adjustments, if any, to the Preliminary Closing Statement of Assets and Liabilities and the calculations supporting any adjustments, to Buyer and Seller no later than the 30th day after the remaining differences underlying the Buyer's Objection are referred to the Auditor, or such longer period of time as the Auditor determines is necessary. The Auditor's determination shall be conclusive and binding upon the parties. The fees and disbursements of the Auditor shall be allocated between Buyer and Seller in such a way that Seller shall be responsible for that portion of the fees and expenses equal to such fees and expenses multiplied by a fraction, the numerator of which is the aggregate dollar value of disputed items submitted to the Auditor that are resolved against Seller (as finally determined by the Auditor), and the denominator of which is the total dollar value of the disputed items so submitted, and Buyer shall be responsible for the remainder of such fees and expenses. Buyer and Seller shall make readily available to the Auditor all relevant information, books and records and any work papers relating to the Preliminary Closing Statement of Assets and Liabilities and all other items reasonably requested by the Auditor. In no event may the Auditor's resolution of any difference be for an amount which is outside the range of Buyer's and Seller's disagreement.

(d) *Final Statement of Assets and Liabilities*. The Preliminary Closing Statement of Assets and Liabilities (after giving effect to any adjustment pursuant to Section 1.3(c)) shall become final and binding upon the parties upon the earliest of (i) the failure by Buyer to object thereto within the period permitted under Section 1.3(b), (ii) the agreement between Buyer and Seller with respect to the full resolution of the Buyer's Objection and (iii) the decision by the Auditor with respect to any disputes under Section 1.3(c). The Preliminary Closing Statement of Assets and Liabilities, as adjusted pursuant to the agreement of the parties or decision of the Auditor, when final and binding is referred to herein as the "*Final Statement of Assets and Liabilities*."

(e) *Adjustments to the Purchase Price*. As soon as practicable (but not more than five business days) after the date on which the Final Statement of Assets and Liabilities shall have been determined in accordance with this Section 1.3, (A) Buyer shall pay to Seller by wire transfer in immediately available funds in U.S. dollars the amount, if any, by which the Special Net Book Value as at the Closing Date as reflected in the Final Statement of Assets and Liabilities is greater than $8,022,000, which shall constitute an immediate upward adjustment of the Purchase Price in such amount or (B) Seller shall pay to Buyer by wire transfer in immediately available funds in U.S. dollars the amount, if any, by which $8,022,000 is greater than the Special Net Book Value as at the Closing Date as reflected in the Final Statement of Assets and Liabilities, which shall constitute an immediate downward adjustment of the Purchase Price in such amount. If either party is required to make a payment pursuant to this Section 1.3(e), such party shall also be required to pay interest on the amount of such payment for each day during the period commencing as of (and including) the Closing Date and ending on (but not including) the date on which the payment is made by such party at a floating rate of interest equal to the ninety (90) day commercial paper rate for high grade unsecured notes as published from time to time in *The Wall Street Journal, Eastern Edition* in effect for such day, with such interest to be calculated on the basis of a 365 day year for actual days elapsed.

ARTICLE II

CLOSING

2.1. *Time and Place*. Unless this Agreement shall have been terminated and the transactions herein contemplated shall have been abandoned pursuant to Section 9.1 hereof, the closing with respect to the purchase and sale of the Assets (the "*Closing*") shall take place at the offices of Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, New York, at 10:00 a.m. on the last day of the month during which all of the conditions to the Closing set forth in Article V hereof are satisfied or waived (other than the conditions to be satisfied on the Closing Date, but subject to waiver or satisfaction of such conditions) or on the next business day in The City of New York if such day is not a business day in The City of New York or such other place, time and date as the parties may agree. The actual date of the Closing is herein referred to as the "*Closing Date*". For all purposes, the Closing shall be deemed to have occurred on, and the effective time of Closing shall be deemed to be, 11:59 p.m. New York City time on the Closing Date. Notwithstanding the foregoing, the closing with respect to the purchase and sale of the French Assets shall take place at the time of or after the Closing at a time and place in France as mutually agreed upon by the parties after Seller's French Subsidiary, Bard France S.A.S., shall have obtained an opinion from the Bard France S.A.S. workers' council regarding the sale of the French Business, as required pursuant to Article L 432-1 of the French Labor Code (the "*French Closing*").

2.2. *Deliveries by Seller*. (a) *Deliveries on the Closing Date*. On the Closing Date and at the place specified in Section 2.1, upon the terms and subject to the conditions of this Agreement, Seller shall, and shall cause its Subsidiaries, as applicable, to deliver to Buyer and/or its Designees, as applicable:

(i) such deeds, bills of sale and other instruments of transfer, conveyance and assignment, duly executed and in valid form, as shall be sufficient to transfer the Assets and Assumed Liabilities to Buyer and/or its Designees, in each case, in such form reasonably satisfactory to Buyer and Seller;

(ii) the certificates, consents and other documents referred to herein as deliverable by Seller or its Subsidiaries at the Closing, including, without limitation, a certificate stating that Seller is not a "foreign" person within the meaning of Section 1445 of the Code, which certificate shall set forth all information required by, and otherwise be executed in accordance with, Treasury Regulation Section 1.1445-2(b)(2); and

(iii) a receipt for the Purchase Price.

(b) *Delivery on or After the Closing Date*. On or as promptly as practicable following the Closing Date, Seller shall, and shall cause its Subsidiaries to, take such action as shall be necessary to put Buyer and/or its Designees in the possession or control of the Assets.

2.3. *Deliveries by Buyer*. On the Closing Date, upon the terms and subject to the conditions of this Agreement, Buyer and/or its Designees shall deliver to, or to the order of, Seller:

(i) the Purchase Price;

(ii) such instruments as shall be necessary, in each case, in such form reasonably satisfactory to Seller and Buyer, duly executed and in valid form effective to evidence the assumption by Buyer or its Designees, as applicable, of the Assumed Liabilities; and

(iii) the certificates, consents and other documents referred to herein as deliverable by Buyer at the Closing.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

3.1. *Representations and Warranties of Seller*. Seller represents and warrants to Buyer as follows:

(a) *Due Incorporation and Power*. Seller is a corporation duly incorporated, validly existing and in good standing under the Laws of the State of New Jersey and has all requisite corporate power and authority to enter into this Agreement and the Ancillary Agreements (and together with this Agreement, the "*Transaction Agreements*") to which it is a party, perform its obligations hereunder and thereunder and own, operate and lease the Assets and to carry on the Business as it is currently conducted by the Seller and its Subsidiaries. Each Subsidiary of Seller that will be conveying Assets to Buyer and/or its Designees pursuant to Section 1.1 is, or on the Closing Date (or with respect to Bard France S.A.S., on the French Closing Date) will be, a corporation duly incorporated, validly existing and in good standing to the extent that the concepts of due incorporation, valid existence and good standing exist in the relevant jurisdiction, under the Laws of the jurisdiction of its incorporation and has, or on the Closing Date (or with respect to Bard France S.A.S., on the French Closing Date) will have, all requisite corporate power and authority to consummate the applicable transactions contemplated by the Transaction Agreements.

(b) *Authorization and Validity of Agreements*. The execution, delivery and performance by Seller of this Agreement and the consummation by it of the transactions contemplated hereby have been duly authorized by its Board of Directors. On or prior to the Closing Date (or with respect to Bard France S.A.S., on the French Closing Date), the execution, delivery and performance by Seller and each Subsidiary of Seller of the Ancillary Agreements to which it is a party and the consummation by it of the applicable transactions contemplated thereby will be duly authorized by its respective Board of Directors, and no other corporate action on its part or on the part of its stockholders will be necessary for the execution, delivery and performance by it of the Transaction Agreements to which it is a party and the consummation by it of the applicable transactions contemplated hereby and thereby. This Agreement has been, and at the Closing (or with respect to Bard France S.A.S., at the French Closing) each of the Ancillary Agreements will be, duly executed and delivered by Seller and its Subsidiaries, as applicable, and this Agreement is, and at the Closing (or with respect to Bard France S.A.S., at the French Closing) each of the Ancillary Agreements will be, a legal, valid and binding obligation of Seller and its Subsidiaries, as applicable, enforceable against each of Seller and its Subsidiaries, as the case may be, in accordance with their respective terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at Law) and an implied covenant of good faith and fair dealing.

(c) *No Conflict*. Except as set forth in *Schedule 3.1(c)* hereto, the execution, delivery and performance by Seller and its Subsidiaries, as applicable, of the Transaction Agreements to which they are a party and the consummation by Seller and its Subsidiaries, as applicable, of the transactions contemplated hereby and thereby does not and will not (i) violate or result in the breach of any provision of federal, state, local or foreign law, rule, regulation, order, injunction, judgment or decree (each, a "*Law*") applicable to Seller or any of its Subsidiaries, as applicable, in connection with the consummation of any of the transactions contemplated hereby; (ii) except for the antitrust clearances under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (and the rules and regulations promulgated thereunder), foreign antitrust or competition regulations, if applicable, and the merger and competition regulations, if applicable, of the European Community or similar supranational bodies, if applicable, require any consent or approval of, or filing with or notice to, any Governmental Authority under any Law applicable to Seller or any of its Subsidiaries, as applicable, in connection with the consummation of any of the transactions contemplated hereby; (iii) violate any provision of the Certificate of Incorporation or By-laws of Seller; (iv) require any consent, approval or notice under, conflict with, or result in the breach, lapse, cancellation or termination of, or constitute a default under, or result in the acceleration (whether after the filing of notice or the lapse of time or both) of any right or obligation of, or the performance by, Seller or any of its Subsidiaries under, or result in a loss of any benefit to which Seller or any of its Subsidiaries is entitled or result in any penalty or adverse consequence under, any Contract to which Seller or one of its Subsidiaries is a party and which relates exclusively to the Business or Permit issued by any Governmental Authority which related exclusively to the Business; or (v) result in the creation or imposition of any Lien on any of the Assets (except in the case of clauses (i), (ii), (iv) or (v), for such violations, consents, approvals, filings, notices, conflicts, breaches, lapses, cancellations, terminations, defaults, accelerations, penalties, adverse consequences or losses, the absence of which or the result of which, as the case may be, would not be reasonably likely to have a Material Adverse Effect).

(d) *Initial Statement of Assets and Liabilities*. The amounts reflected on the Initial Statement of Assets and Liabilities for inventory, property, plant and equipment, intangibles, accounts payable and accrued expenses were (i) computed in accordance with GAAP and (ii) calculated consistent with the accounting policies, procedures and methodologies set forth in *Schedule 3.1(d)*.

(e) *Absence of Material Adverse Effect*. Except as disclosed in *Schedule 3.1(e)*, since December 31, 2003, (i) the Business has been conducted in the ordinary course of business consistent with past practice and (ii) there has not been any event, change, condition or development that, individually or in the aggregate, has had or would be reasonably likely to have a Material Adverse Effect.

(f) *Taxes*. (i) Except as set forth in *Schedule 3.1(f)(i)*, there has been timely filed by or on behalf of Seller and its Subsidiaries, and with respect to the Business, all material returns, declarations, statements, reports, schedules, forms and information returns and any amended tax returns relating to any federal, state, local and foreign income, profits, franchise, gross receipts, payroll, sales, employment, use, real and personal property, real estate, excise, value added, estimated, stamp, alternative or add-on minimum, environmental, withholding and any other taxes, duties or assessments, together with all interest, penalties and additions imposed with respect to such amounts (collectively, "*Taxes*") required to have been filed (the "*Tax Returns*"), and all Taxes, with respect to the Business, shown as due on such Tax Returns have been or will be paid in a timely fashion, and all such Tax Returns were true, complete and correct in all material respects as of filing.

(ii) Except as disclosed in *Schedule 3.1(f)(ii)*, no audit or other proceeding by any Governmental Authority is pending with respect to any Taxes of the Business.

(iii) There are no Liens for Taxes on any Asset, other than with respect to Taxes not yet due and payable or which are being contested in good faith.

(iv) The Seller and its Subsidiaries have withheld and paid in connection with the operation of the Business all material Taxes required to be withheld and paid with respect to any employee, creditor, independent contractor or other third party.

(g) *Title; Liens and Encumbrances; Assets; No Other Interests*. Except as set forth in *Schedule 3.1(g)*, on the Closing Date, Seller or the applicable Subsidiary of Seller will own and have good and valid title to the assets of Seller and its Subsidiaries in which Seller's and its Subsidiaries' right, title and interest are being transferred pursuant to Section 1.1, free and clear of any liens, pledges, mortgages or security interests, except (w) statutory liens arising or incurred in the ordinary course of business with respect to which the underlying obligations are not delinquent, (x) liens for Taxes the amount or validity of which are being contested in good faith or which are not yet delinquent, (y) carriers', warehousemen's, mechanics', materialmen's, repairmen's, supplier's or other like liens arising in the ordinary course of business which are not overdue for a period of more than 30 days or which are being contested in good faith by appropriate proceedings and (z) any interest of any third party to a Contract that is an Asset, to the extent such interest arises from such Contract (the "*Liens*").

(h) *Material Contracts*. *Schedule 3.1(h)* hereto sets forth each Material Contract to which Seller or one of its Subsidiaries is a party and which relate exclusively to the Business. For the purpose of this Agreement "*Material Contract*" shall mean any Contract which by its terms (A) after the date hereof, requires any party thereto to pay an amount or provide consideration of any nature (whether in a lump sum or in a series of installments) or provides for financial commitments or, in any case, has an aggregate future Liability in excess of $25,000, (B) has a remaining stated term in excess of one year and may not be terminated by any party thereto upon less than three months' notice, other than maintenance and service agreements and leases for personal property entered into in the ordinary course of business or (C) provides for a component or material which is available from a sole source. None of Seller or any of its Subsidiaries is in material breach of or default in the performance of its obligations under any Material Contract and, to the Knowledge of Seller, no breach or default, alleged breach or default, or event which would (with the passage of time, notice or both) constitute a breach or default thereunder by Seller or any of its Subsidiaries (or, to the Knowledge of Seller, any other party or obligor with respect thereto) has occurred, or as a result of its performance will occur; except for such breaches or defaults which would not be reasonably likely to have a Material Adverse Effect. To the Knowledge of Seller, each Material Contract is in full force and effect. Complete and correct copies of each Material Contract, including, without limitation, all amendments and supplements thereto, have been provided to the General Counsel or Deputy General Counsel for the Buyer other than (x) all Contracts relating to the French Business, international tenders and international customers, each of which will be delivered to the General Counsel or Deputy General Counsel for Buyer as promptly as practicable and in any event no later than September 15, 2004 and (y) the Contracts referenced by Items 49, 51 and 52 (to the extent not to be delivered pursuant to clause (x)) on *Schedule 3.1(h)*, which will be made available to representatives of Buyer on and after August 23, 2004.

(i) *Legal Proceedings*. Except as identified in *Schedule 3.1(i)* hereto, there is no civil, criminal or administrative claim, action, proceeding, arbitration or governmental investigation (each, a "*Legal Proceeding*") which is material and which is pending or, to the Knowledge of Seller, threatened in any jurisdiction, in each case, to which Seller or any of its Subsidiaries is a party or, in the case of an investigation, of which Seller or any of its Subsidiaries is the subject and which (i) seeks to restrain or enjoin the consummation of the transactions contemplated by this Agreement or (ii) involves the Business or any of the Assets.

(j) *Government Licenses, Permits and Related Approvals*. Within 14 days of the date hereof, Seller shall provide to Buyer a schedule listing each material license, permit, consent, certification, exemption, approval, authorization, qualification, order and franchise issued by any Governmental Authority used by Seller and its Subsidiaries to conduct the Business as presently conducted (the "*Material Permits*"). Except as set forth in such schedule and except as would not be reasonably likely to have a Material Adverse Effect, to the Knowledge of Seller, each item listed in such schedule that constitutes an Asset will as of the Closing be valid and in full force and effect and neither Seller nor any of its Subsidiaries has received any written notice from any Governmental Authority canceling, rescinding, materially modifying or refusing to renew any such item that constitutes an Asset.

(k) *Conduct of Business in Compliance with Regulatory Requirements*. All Products have been manufactured and marketed in compliance with all applicable U.S. Food and Drug Act, EU Medical Device Directive or other governmental requirements, except to the extent that failure to comply therewith would not be reasonably likely to have a Material Adverse Effect. Without limiting the generality of the preceding sentence, except as set forth on *Schedule 3.1(k)*, (i) Seller or one of its Subsidiaries are legally authorized to manufacture and to sell all Products under a 510(k) or CE mark issued in the name of the Seller or one of its Subsidiaries or is exempt from pre-market notification requirements; (ii) all Products are produced by properly registered facilities and have been correctly classified and listed with the appropriate Governmental Authority; (iii) all labeling/marketing literature, advertising and web content related to currently marketed indications and intended uses are covered by the applicable PMN/510(k) or CE mark and meet regulatory requirements; (iv) the Products and the facilities at which they are manufactured and the processes by which they are manufactured are not subject to recall or other regulatory action, including Form FDA 483 Inspection Observations, FDA Warning Letters or FDA injunction; (v) there are no previous or current product or labeling remediations that have not been reported to a Governmental Authority, to the extent such reporting is required; (vi) all Products properly bear or bore as applicable, a CE mark or otherwise comply or complied, as applicable, in all respects with any similar requirements imposed under the laws of any foreign country in which the Products are or were, as applicable, sold; (vii) Seller or one of its Subsidiaries has all required records relating to such compliance, including, without limitation, technical files, design history files, clinical studies and validations; and (viii) any clinical studies for Product approvals currently or previously undertaken have been approved by the necessary Governmental Authorities, to the extent such approval is required, and have been conducted in compliance with applicable regulatory rules of approval, conduct and patient rights.

(l) *Labor Matters*. Except as set forth in *Schedule 3.1(l)* hereto: (i) there are no collective bargaining agreements with any unions relating to any Scheduled Employees, Glens Falls Employees or the Business, nor is any such collective bargaining agreement presently being negotiated nor is there any duty on the part of Seller or any of its Subsidiaries to bargain with any labor organization with respect to any of the Scheduled Employees, Glens Falls Employees or the Business; (ii) there is no unfair labor practice charge or complaint pending or, to the Knowledge of Seller, threatened against the Seller or any of its Subsidiaries or relating to any of the Scheduled Employees or Glens Falls Employees; (iii) there is not now nor has there been in the three years prior to the date of this Agreement any strike, slowdown, work stoppage, lockout or other labor controversy in effect or, to the Knowledge of Seller, threatened against the Seller or any of its Subsidiaries affecting the Business; (iv) no action, suit, complaint, charge, arbitration, inquiry, proceeding or investigation by or before any Governmental Authority or arbitration tribunal or body brought by or on behalf of any Scheduled Employee or Glens Falls Employee is pending or, to the Knowledge of Seller, threatened by any Scheduled Employee or Glens Falls Employee against the Seller or any of its Subsidiaries; and (v) neither the Seller nor any of its Subsidiaries is a party to or otherwise bound by any consent decree or judgment that is presently in effect and relating to employment practices affecting any of the Scheduled Employees or Glens Falls Employees.

(m) *Intellectual Property*. Except as set forth in *Schedule 3.1(m)*, to the Knowledge of the Seller: (A) Seller or one of its Subsidiaries owns, licenses or has the right to use the Transferred Intellectual Property free and clear of all Liens; (B) the issued and registered Transferred Intellectual Property is valid and is not being infringed by others; (C) except for disputes that have been resolved (and, in the case of disputes resolved since January 1, 2002, disclosed to Buyer), no third party has since January 1, 2002 threatened or made a written claim (or, to the actual knowledge of the General Counsel of Seller, made an unwritten claim other than an unwritten claim which the General Counsel determined was not a bona fide claim) against Seller or any of its Subsidiaries that the operation of the Business is infringing any Intellectual Property of such party except as would not be reasonably likely to have a Material Adverse Effect; (D) the operation of the Business by Seller does not infringe any third party Intellectual Property rights except as would not be reasonably likely to have a Material Adverse Effect and (E) Seller and its Subsidiaries have taken commercially reasonable measures to protect the confidentiality of all material trade secrets included in the Transferred Intellectual Property whose value would be impaired by public disclosure.

(n) *Employee Benefit Plans*.

(i) Except as described in Section 3.1(h), *Schedule 3.1(n)(i)* hereto contains a true and complete list of each employee benefit plan (within the meaning of Section 3(3), of the Employee Retirement Income Security Act of 1974, as amended ("*ERISA*")) and each other material plan, agreement, program, policy, practice or arrangement, whether oral or written, providing employee benefits or compensation (including, without limitation, any stock purchase, stock option, fringe benefit, bonus or incentive, deferred compensation, retirement, pension, annuity, death, assurance, insurance, employment, severance or change of control agreements, plans, programs, policies or arrangements) under which any Scheduled Employee or Glens Falls Employee has any present or future right to benefits or compensation for which Buyer or any Affiliates of Buyer will have Liability after the Closing Date; excluding, however, any plans, programs, policies and arrangements which exist to provide benefits mandated by Law. All such plans, agreements, programs, polices and arrangements shall be collectively referred to as the "*Benefit Plans*."

(ii) Except for Benefit Plans relating to the French Business, with respect to each Benefit Plan, Seller has made available to Buyer a current, accurate and complete copy and, to the extent applicable, (A) any summary plan description and (B) the Seller Severance Plan.

(iii) Each Benefit Plan has been established and administered in accordance with its terms and is in compliance with applicable Law, including, without limitation, to the extent applicable, any foreign Laws, ERISA and the Internal Revenue Code of 1986, as amended (the "*Code*"), except where the failure to comply would not be reasonably likely to have a Material Adverse Effect.

(iv) Except as set forth in *Schedule 3.1(n)(iv)*, each Benefit Plan and related trust intended to be tax qualified under the Code has received a favorable determination from the Internal Revenue Service or will be timely submitted for such determinations. To the Knowledge of Seller, nothing has occurred since any such determination that would be reasonably likely to adversely affect such qualification.

(v) Except as set forth in *Schedule 3.1(n)(v)*, during the last 5 years with respect to any Benefit Plan, (i) no "reportable event" (as such term is used in section 4043 of ERISA) (other than those events for which the 30 day notice has been waived pursuant to the regulations) has occurred with respect thereto, (ii) no "accumulated funding deficiency" (as such term is used in section 412 or 4971 of the Code) has occurred, (iii) such Benefit Plan has not been terminated and (iv) no "prohibited transaction" (within the meaning of Section 406 of ERISA or Section 4975 of the Code) has occurred from which a material Liability is outstanding or which could reasonably be expected to result in material Liability to Buyer, where any such reportable event, deficiency, termination or prohibited transaction has resulted in a Material Adverse Effect.

(vi) Except as set forth in *Schedule 3.1(n)(vi)* hereto, no actions, suits or claims (other than routine claims for benefits in the ordinary course), whether under federal, state, local or foreign Laws or otherwise, are pending or, to the Knowledge of Seller, threatened with respect to any Benefit Plan which are reasonably likely to have a Material Adverse Effect.

(vii) Except as set forth in *Schedule 3.1(n)(vii)*, no Benefit Plan exists which could, after the Closing Date, result in the payment by Buyer to any Scheduled Employee or Glens Falls Employee of any money or other property or rights or the acceleration or provision of any other rights or benefits to any such Scheduled Employee or Glens Falls Employee as a result of the consummation of the transactions contemplated by this Agreement (regardless of whether such payment is a "parachute payment" within the meaning of Section 280G of the Code).

(viii) Except as set forth in *Schedule 3.1(n)(viii)*, no Benefit Plan is a "multiemployer plan" (within the meaning of Section 3(37) of ERISA) and neither Seller nor any member of its "controlled group" (such term to include any member of a controlled group of organizations within the meaning of Section 414(b), (c), (m), or (o) of the Code) has incurred any withdrawal Liability that (i) remains unsatisfied in a material amount or (ii) could reasonably be expected to subject Seller or any member of its controlled group to material controlled group Liability under Section 4001(b) of ERISA.

(ix) Except as set forth in *Schedule 3.1(n)(ix)*: (i) neither Seller nor any of its Subsidiaries has incurred any Liability for any excise tax arising under Section 4971, 4972, 4980 or 4980B of the Code which will result in a Liability to Buyer and no fact or event exists which could reasonably be expected to give rise to any such material Liability to Buyer; (ii) none of the assets of Seller or any of its Subsidiaries is the subject of any Lien arising under Section 302(f) of ERISA or Section 412(n) of the Code; and (iii) neither Seller nor any of its Subsidiaries has been required to post any security under Section 307 of ERISA or Section 401(a)(29) of the Code.

(o) *Brokers, Finders, etc.* With the exception of fees, commissions and expenses which shall be Seller's sole responsibility, Seller has not employed, nor is it subject to any valid claim of, any broker, finder, consultant or other intermediary in connection with the transactions contemplated by this Agreement who might be entitled to a fee or commission in connection with such transactions.

(p) *Completeness and Condition of Assets*. Except as set forth in *Schedule 3.1(p)(i)*, the Assets constitute, in all material respects, all assets necessary to, or used in, the conduct of the Business as presently conducted except for the Excluded Assets. *Schedule 3.1(p)(ii)* sets forth the machinery, tools (not including tools readily available at a price of one thousand dollars ($1,000) or less) and equipment that are (x) necessary for the manufacturing of the Products as manufactured on the Closing Date, (y) used less than exclusively in connection with the Business on the Closing Date and (z) used for packaging, testing or molding. All items of equipment, furniture, furnishings, machinery, tools and other tangible personal property which are Assets are, in all material respects, suitable for the uses for which they are presently used in the Business and, as of the Closing Date, will be, in all material respects, in normal operating condition and free from any known significant defects excepting ordinary wear and tear.

(q) *Environmental Matters*. Except as set forth in a schedule that Seller will provide to the Buyer within 14 days of the date hereof and except as would not reasonably be expected to have a Material Adverse Effect: (i) Seller, its Subsidiaries and their predecessors-in-interest with respect to the operation of the Business are in compliance with all applicable Environmental Laws; (ii) in relation to the Business or the Assets, there have been no material Releases or threatened Releases on any property currently owned or operated by Seller, its Subsidiaries or their predecessors-in-interest or, during the period of ownership or operation, on any property formerly owned or operated by Seller, its Subsidiaries or their predecessors-in-interest; (iii) in relation to the Business or the Assets, neither Seller nor its Subsidiaries is or are subject to any material liability for Hazardous Substance disposal or contamination on any third party property; (iv) in relation to the Business or the Assets, neither Seller nor its Subsidiaries is or are subject to any material liability for any Release or threat of Release of any Hazardous Substance; (v) neither Seller, its Subsidiaries nor their predecessors-in-interest has or have received any written notice or communication relating to the Business from a Governmental Entity or third party indicating that it is in violation of or subject to liability under any Environmental Law and; (vi) in relation to the Business or the Assets, neither the Seller, its Subsidiaries nor their predecessors-in-interest is subject to any order, decree, injunction or other binding written agreement with any Governmental Entity or any material indemnity or other binding written agreement with any third party relating to liability under any Environmental Law. Within 14 days of the date hereof, the Seller will deliver to the General Counsel or Deputy General Counsel for Buyer copies of all written environmental reports, studies, assessments, sampling data and other relevant written environmental information in its possession prepared within the last five years relating to the Business or the Assets.

As used herein, the term "*Environmental Law*" means any applicable federal, state or local law, regulation, order, decree, permit, authorization, common law, or enforceable agency requirement in effect as of the Closing Date relating to: (i) the protection, investigation or restoration of the environment, occupational health and safety or natural resources, (ii) the handling, use, presence, disposal, Release or threatened Release of any Hazardous Substance or (iii) noise, odor, contamination of indoor air, employee exposure to Hazardous Substances, wetlands, pollution, contamination or any injury or threat of injury to persons or property relating to any Hazardous Substance, the term "*Hazardous Substance*" means any substance that is: (i) listed, classified or regulated pursuant to any Environmental Law as being toxic, hazardous or any other term of similar import; (ii) any petroleum product or by-product, asbestos-containing material in a friable condition or radioactive materials; or (iii) any other substance which is regulated under any Environmental Law as being toxic, hazardous or any other term of similar import and the term "*Release*" shall have the meaning provided for under 42 U.S.C. Section 9601(22).

For purposes of the representations set forth in this Section with respect to any predecessor-in-interest to Seller or its Subsidiaries, each such representation is made only to the Knowledge of Seller.

(r) *Other Representations or Warranties*. Except for the representations and warranties contained in this Agreement, neither Seller nor any other person makes any other express or implied representation or warranty on behalf of Seller or its Subsidiaries, including, without limitation, as to the probable success or profitability of the ownership, use or operation of the Business and the Assets by Buyer after the Closing.

3.2. *Representations and Warranties of Buyer*. Buyer represents and warrants to Seller as follows:

(a) *Due Incorporation and Power*. Buyer is a corporation duly incorporated, validly existing and in good standing under the Laws of the State of New York and has all requisite corporate power and authority to enter into the Transaction Agreements to which it is a party and perform its obligations hereunder and thereunder. Each Designee of Buyer is, or on the Closing Date (or with respect to Linvatec France S.A.R.L., on the French Closing Date) will be, a corporation duly incorporated, validly existing and in good standing to the extent that the concepts of due incorporation, valid existence and good standing exist in the relevant jurisdiction, under the Laws of the jurisdiction of its incorporation and has, or on the Closing Date (or with respect to Linvatec France S.A.R.L., on the French Closing Date) will have, all requisite corporate power and authority to consummate the applicable transactions contemplated by the Transaction Agreements.

(b) *Authorization and Validity of Agreements*. The execution, delivery and performance by Buyer of this Agreement and the consummation by it of the transactions contemplated hereby have been duly authorized by its Board of Directors. On or prior to the Closing Date (or with respect to Linvatec France S.A.R.L., on the French Closing Date), the execution, delivery and performance by Buyer and each Designee of Buyer of the Ancillary Agreements to which it is a party and the consummation by it of the applicable transactions contemplated thereby will be duly authorized by its respective Board of Directors, and no other corporate action on its part or on the part of its stockholders will be necessary for the execution, delivery and performance by it of the Transaction Agreements to which it is a party and the consummation by it of the applicable transactions contemplated hereby and thereby. This Agreement has been, and at the Closing (or with respect to Linvatec France S.A.R.L., at the French Closing) each of the Ancillary Agreements will be, duly executed and delivered by Buyer and its Designees, as applicable, and this Agreement is, and at the Closing (or with respect to Linvatec France S.A.R.L., at the French Closing) each of the Ancillary Agreements will be, a legal, valid and binding obligation of Buyer and its Designees, as applicable, enforceable against each of Buyer and its Designees, as the case may be, in accordance with their respective terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at Law) and an implied covenant of good faith and fair dealing.

(c) *No Conflict*. The execution, delivery and performance by Buyer and its Designees, as applicable, of the Transaction Agreements to which they are a party and the consummation by Buyer and its Designees, as applicable, of the transactions contemplated hereby and thereby does not and will not (i) violate or result in the breach of any Law applicable to Buyer or any of its Designees, as applicable, in connection with the consummation of any of the transactions contemplated hereby; (ii) except for the antitrust clearances under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (and the rules and regulations promulgated thereunder), foreign antitrust or competition regulations, if applicable, and the merger and competition regulations of the European Community or similar supranational bodies, if applicable, require any consent or approval of, or filing with or notice to, any Governmental Authority under any Law applicable to Buyer and/or its Designees, as applicable, in connection with the consummation of any transactions contemplated hereby; (iii) violate any provision of the Certificate of Incorporation or By-laws or other constituent documents of Buyer and/or its Designees, as applicable; or (iv) require any consent, approval or notice under, conflict with, or result in the breach, lapse, cancellation, termination of, or constitute a default under, or result in the acceleration (whether after the filing of notice or the lapse of time or both) of any right or obligation of, or the performance by, Buyer or any of its Designees under, or result in a loss of any benefit to which Buyer or any of its Designees is entitled or result in any penalty or adverse consequence under any indenture, mortgage, deed of trust, lease, license, franchise, Contract, agreement, concession or other instrument to which Buyer and/or its Designees, as applicable, are a party or by which they, or their assets, are bound or encumbered (except in the case of clauses (i), (ii) or (iv), for such violations, consents, approvals, filings, notices, conflicts, breaches, lapses, cancellations, terminations, acceleration, penalties, adverse consequences, losses or defaults, the absence of which or the result of which, as the case may be, could not reasonably be likely to have a material adverse effect on the ability of Buyer and/or its Designees, as applicable, to consummate any of the transactions contemplated hereby).

(d) *Brokers, Finders, etc*. With the exception of fees, commissions and expenses which shall be Buyer's sole responsibility, Buyer has not employed, nor is it subject to the valid claim of, any broker, finder, consultant or other intermediary in connection with the transactions contemplated by this Agreement who might be entitled to a fee or commission in connection with such transactions.

(e) *Legal Proceedings*. There is no Legal Proceeding which is material and which is pending or, to the Knowledge of Buyer, threatened in any jurisdiction, in each case, to which Buyer or any of its Designees is a party, or in the case of an investigation, of which Buyer or any of its Designees is the subject and which seeks to restrain or enjoin the consummation of the transactions contemplated by this Agreement.

(f) *Compliance with Law*. Buyer and each of its Designees is in compliance with each applicable Law, except to the extent that failure to comply therewith could not reasonably be likely to have a material adverse effect on the ability of Buyer and its Designees to consummate any of the transactions contemplated hereby.

(g) *Financing*. Buyer has the cash on hand and sufficient availability under its credit facilities to provide all funds necessary to consummate the transactions contemplated hereby and the payment of all of Buyer's related fees and expenses. Buyer has no reason to believe that such available cash and financing shall not be available at the Closing.

(h) *Disclaimer Regarding Projections*. In connection with Buyer's investigation of the Business, Buyer has received from the Seller and its Affiliates and their respective representatives and agents certain projections and other forecasts, including, without limitation, projected financial statements, certain business plan information and other data related to the Business. Buyer acknowledges that (a) there are uncertainties inherent in attempting to make such projections, forecasts and plans and, accordingly, is not relying on them, (b) Buyer is familiar with such uncertainties and is taking full responsibility for making its own evaluation of the adequacy and accuracy of all projections, forecasts and plans so furnished to it and (c) Buyer shall have no claim against anyone with respect to any of the foregoing. Accordingly, Buyer acknowledges that none of the Seller and its Affiliates has made any representation or warranty with respect to such projections and other forecasts and plans.

(i) *No Other Representations or Warranties*. Except for the representations and warranties contained in this Agreement, neither Buyer nor any other person makes any other express or implied representation or warranty on behalf of Buyer.

3.3. *Survival of Representations and Warranties*. Subject to Section 8.5, and other than with respect to the representations of Seller contained in Section 3.1(q) which shall survive until the date that is three years after the Closing Date, the respective representations and warranties of Seller and Buyer contained in this Article III, the certificate delivered by Seller pursuant to Section 5.2(c) and the certificate delivered by Buyer pursuant to Section 5.3(c) at the Closing shall survive until the date that is eighteen months after the Closing Date; *provided*, *however*, that the representations and warranties set forth in Section 3.1(f) shall expire at Closing.

ARTICLE IV

COVENANTS

4.1. *Access to Information Concerning Properties and Records*. (a) *Access*. During the period commencing on the date hereof and ending on the Closing Date, and subject to applicable Law, including, without limitation, antitrust Laws, Seller shall, and shall cause its Subsidiaries to, afford to Buyer, its counsel, accountants and other authorized representatives reasonable access during normal business hours, upon reasonable notice and in such manner as will not unreasonably interfere with the conduct of their respective businesses, to the facilities, books and records and personnel of the Business.

(b) *Subsequent Access*. Following the Closing, Seller shall provide Buyer and its representatives, and Buyer shall provide Seller and its representatives, reasonable access to its facilities, personnel and records of Seller and Buyer, relating to the Business to the extent Buyer or Seller shall reasonably request such access.

(c) *Retention of Records*. Following the Closing, Buyer agrees to, and agrees to cause its Designees to, retain the books, records, documents, instruments, accounts, correspondence, writings, evidences of title and other papers relating to the operation of the Business prior to the Closing Date for ten years from the creation of the document or for such longer period as may be required by any Law or court order applicable to Seller or any of its Subsidiaries and disclosed to Buyer and all Tax records (including Tax Returns and returns related to VAT) until the expiration of all applicable statutes of limitation.

4.2. *Conduct of the Business Prior to the Closing Date*. Seller agrees that, except as provided in this Agreement, as required by applicable Law or any Contract, as consented to or approved in writing by Buyer (which approval shall not be unreasonably withheld) or as set forth in *Schedule 4.2* hereto, during the period commencing on the date hereof and ending at the Closing Date:

(i) the Business shall be conducted in the ordinary course of business consistent with past practice and Seller shall use commercially reasonable efforts to (a) preserve intact the Business and related relationships with material customers, suppliers and other parties with whom it has business relationships and (b) keep available the services of present employees (it being understood that Buyer assumes the risks associated with personnel changes customarily attendant to a change of ownership);

(ii) Seller and its Subsidiaries in connection with the Business will not (A) acquire, license, sub-license, dispose of, lease, sub-lease, transfer or subject to a Lien any properties or assets that will become Assets hereunder (or, in the case of a disposition, that would otherwise become an Asset hereunder), other than (1) in the ordinary course of business consistent with past practices or (2) properties or assets which are not material to the Business in the ordinary course; (B) grant or approve any increase in the compensation of Scheduled Employees (including, without limitation, any increase in existing, or any creation of new, severance or termination pay obligations), or grant or approve any bonus, in each case, except for increases or bonuses following five (5) business days prior written notice to Buyer listing each proposed change and (1) in the ordinary course of business and consistent with past practice, (2) as a result of collective bargaining or (3) as required by applicable Law, any employment or other agreement, any policy or any bonus, pension, profit-sharing or other plan or commitment presently in effect; (C) enter into employment agreements with any Scheduled Employee, except for any new hires or promotions in the ordinary course of business and consistent with past practice and consulting agreements terminable on not more than 30 days notice; (D) adopt or amend any bonus, profit sharing, compensation, stock option, pension, retirement, deferred compensation, employment or other plan, agreement trust, fund or arrangement for the sole benefit of Scheduled Employees, except as may be required to comply with applicable Law or as may have been contemplated by Seller and disclosed to Buyer in writing prior to the date hereof; (E) make any material capital expenditure, other than (1) in the ordinary course of business or (2) pursuant to existing business plans disclosed to Buyer prior to the date hereof; (F) terminate or extend any Material Contract that will constitute an Asset hereunder or enter into any Contract that would be a Material Contract and which will constitute an Asset hereunder; (G) fail to maintain insurance coverage at levels consistent with presently existing levels; (H) make any Tax elections that have a continuing Material Adverse Effect upon the Business after the Closing; or (I) agree, whether in writing or otherwise, to do any of the foregoing.

Nothing in this Agreement, including, without limitation, in this Section 4.2, shall limit the ability of Seller and its Subsidiaries to transfer Assets to, in the case of Seller, any Subsidiary of Seller and, in the case of any Subsidiary of Seller to Seller or another Subsidiary of Seller.

4.3. *Antitrust Laws*. Seller and Buyer agree to cooperate and use their best efforts to make as promptly as practicable (and in any event no later than 15 business days after the date hereof) all filings which are or may become required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "*Antitrust Improvements Act*") or any applicable foreign antitrust Laws and to supply promptly any additional information and documentary material that may be requested pursuant to the Antitrust Improvements Act or any applicable foreign antitrust Laws. Seller and Buyer agree to use their best efforts to obtain any clearance required under the Antitrust Improvements Act or any applicable foreign antitrust Laws for the transactions contemplated hereby and oppose any preliminary injunction sought by any Governmental Authority preventing the consummation of the transactions contemplated hereby. Seller and Buyer shall furnish each other such necessary information and reasonable assistance as the other may reasonably request in connection with its preparation of necessary filings or submissions to any Governmental Authority of competent jurisdiction. Seller and Buyer will supply each other copies of all pre-Closing correspondence, filings or communications (or memoranda setting forth the substance thereof) between such party or its Subsidiaries or their respective representatives, on the one hand, and the Federal Trade Commission (the "*FTC*"), the Antitrust Division of the United States Department of Justice (the "*Antitrust Division*") or any other Governmental Authority with regulatory jurisdiction over enforcement of any applicable antitrust Laws on the other hand, with respect to the Transaction Agreements and the transactions contemplated hereby other than any of such information filed pursuant to Items 4(c) and 5 of the Hart-Scott-Rodino Notification and Report Form or communications regarding the same or information or documents of a similar confidential nature. The filing fees under the Antitrust Improvements Act or any applicable foreign antitrust Laws shall be borne equally by Buyer and Seller.

4.4. *Further Actions*. (a) *Approvals, Filings and Defense of Proceedings*. Subject to the terms and conditions of this Agreement, and in addition to the obligations set forth in Section 4.3, each of the parties hereto agrees to use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective the transactions contemplated by this Agreement, including, without limitation, using its reasonable best efforts: (i) to obtain at the earliest practicable date prior to the Closing Date (pursuant to instruments reasonably satisfactory to Buyer and Seller in form and substance) any licenses, permits, consents, approvals, authorizations, qualifications and orders of Governmental Authorities as are required in connection with the consummation of the transactions contemplated hereby and by the Ancillary Agreements; (ii) to effect, in addition to the filings contemplated by Section 4.3 hereof, all necessary registrations and filings including, without limitation, required registrations and filings with foreign Governmental Authorities; (iii) to defend any lawsuits or other Legal Proceedings, whether judicial or administrative, whether brought derivatively or on behalf of third parties (including, without limitation, governmental agencies or officials), challenging this Agreement or the Ancillary Agreements or the consummation of the transactions contemplated hereby or thereby; (iv) to take such actions as are necessary to satisfy the conditions to Closing set forth in Article V; and (v) subject to appropriate confidentiality protections, to furnish to each other such information and assistance and to consult with respect to the terms of any registration, filing, application or undertaking as reasonably may be requested in connection with the foregoing.

(b) *Full Benefit of this Agreement*. Seller and Buyer shall do or procure to be done all such further acts and things and execute or procure the execution of all such other documents, as such other party may from time to time reasonably require, whether on or after Closing, for the purpose of giving to such other party the full benefit of all the provisions of this Agreement. In this regard but without limitation, after the Closing Date, Buyer shall, and shall cause its Designees to, take all actions to return to Seller all information, data, properties and assets other than Assets that may be in the possession of Buyer or its Designees and its or their Subsidiaries. In the event that Buyer or any of its Designees or Subsidiaries has possession of any information or data related to the business of Seller or its Subsidiaries other than the Business, Buyer shall, and shall cause its Designees and Subsidiaries to, (i) not use such information or data and (ii) keep such information and data strictly confidential.

(c) *Delayed Assignment of Agreements*. (i) Anything in this Agreement to the contrary notwithstanding, nothing in this Agreement shall be construed as an attempt to assign or transfer any Contract that is by its terms or at Law non-assignable without the consent of the other party thereto and as to which such consent shall not have been given. In order, however, that the full value of every Contract of the character described in the immediately preceding sentence (to the extent to which it is a Contract) and all claims and demands relating to such Contracts may be realized, Seller or its Subsidiaries, as applicable, shall, to the extent reasonably possible and to the extent it would not impose any material obligation on Seller or any of its Subsidiaries, keep such Contracts in effect and shall give Buyer or Buyer's Designees the benefit of each such Contract to the same extent as if it had been assigned, and Buyer or Buyer's Designees shall perform for the benefit of the Seller or its Subsidiaries, as applicable, the obligations under the Contract relating to the benefit obtained by Buyer or Buyer's Designees. Upon the receipt by Buyer or Seller following the Closing Date of the consent of the other party to any such Contract that is by its terms or at Law non-assignable without such consent, such Contract shall, subject to Section 4.4(c)(ii), without any further action on the part of Buyer or Seller, be deemed to have been assigned by Seller or its Subsidiaries, as applicable, to Buyer or one of Buyer's Designees and assumed by Buyer or one of Buyer's Designees as of the date of such consent.

(ii) Anything in this Agreement to the contrary notwithstanding, nothing in this Agreement shall be construed as an attempt to assign or transfer any Contract to which an employee of the Business is a party prior to the date such employee becomes an employee of Buyer or one of its Designees; *provided*, that the foregoing will not release Buyer or its Designees of an obligation hereunder, including, without limitation, with respect to severance. Subject to Section 4.4(c)(i), at any time after the Closing that such an employee becomes an employee of Buyer or one of its Designees, each such Contract (to the extent to which it is an Asset) shall, without any further action on the part of Buyer or Seller, be deemed to have been assigned by Seller or its Subsidiaries, as applicable, to Buyer or one of Buyer's Designees and assumed by Buyer or one of Buyer's Designees as of such time.

(d) *Receivables*. Seller shall promptly deliver to Buyer any cash, checks or other instruments of payment (with all necessary endorsements) received by it after the Closing relating to the conduct of the Business after the Closing. Buyer shall, and shall cause its Designees to, promptly deliver to Seller any cash, checks or other instruments of payment (with all necessary endorsements) received by it after the Closing Date relating to the conduct of the Business prior to the Closing.

(e) *Ancillary Agreements*. Buyer shall, or shall cause its Designees to, and Seller shall, or cause its Subsidiaries to, execute and deliver at or prior to Closing (i) the Transition and Supply Agreement; (ii) the Sublease Agreement and (iii) the License and Supply Agreements and Buyer shall cause Linvatec S.A.R.L. to, and Seller shall cause Bard France S.A.S. to, execute and deliver at the French Closing the Partial Asset Sale Agreement.

4.5. *Covenant Not to Compete*. Seller agrees that Seller and its Subsidiaries will not, without the written approval of Buyer, (i) for the period beginning on the Closing Date and ending on the fourth anniversary of the Closing Date engage, directly or indirectly, in the manufacturing, marketing or sale anywhere in the world of (x) Endoscopic Gastrointestinal Products, (y) Pulmonary Bronchoscopy Products or (z) products that are substantially equivalent to the Products in design and current application (the foregoing activities, collectively, the "*Competitive Sales Activities*") and (ii) for the period beginning on the Closing Date and ending two (2) years and six (6) months after the Closing Date engage, directly or indirectly, in the design or development anywhere in the world of (x) Endoscopic Gastrointestinal Products, (y) Pulmonary Bronchoscopy Products or (z) products that are substantially equivalent to the Products in design and current application (the foregoing activities, collectively, the "*Competitive Development Activities*", together with the Competitive Sales Activities, the "*Competitive Activities*"). The foregoing shall not in any way limit or preclude Seller or its Subsidiaries from manufacturing, marketing, selling, designing or developing such products for applications relating to GERD, obesity or gastrostomy or from manufacturing, marketing, selling, designing or developing metal stents not placed through an endoscope or core tissue biopsy devices and kits. In addition, nothing contained herein shall limit the right of Seller or any Subsidiary of Seller to (i) hold and make passive investments in securities of any person that is registered on a national securities exchange or admitted to trading privileges thereon or actively traded in a generally recognized over-the-counter market; *provided*, that Seller's and any such Subsidiary's aggregate beneficial equity interest therein shall not exceed 10% of the outstanding shares or interests in such person; (ii) engage, directly or indirectly, in any activity that Seller or its Subsidiaries are expressly authorized to perform pursuant to the terms of the Ancillary Agreements, (iii) continue to engage in any type of business conducted by the Seller or any of its Subsidiaries as of the date hereof that is not part of the Business; (iv) market, sell, design or develop products or services that are under development by Seller or its Subsidiaries as of the date hereof which are not part of the Business; (v) operate the French Business pending the French Closing; or (vi) engage in any transaction whereby, directly or indirectly, it acquires (whether by merger, stock purchase, purchase of assets or otherwise) any person or business, or any interest in any person or business, engaged, directly or indirectly, in any Competitive Activity at the time of such acquisition; *provided*, that such person or business is not primarily engaged in the conduct of Competitive Activities; and *provided*, further, that if such transaction is consummated (A) in the case of Competitive Sales Activities, prior to the third anniversary of the Closing Date, or (B) in the case of Competitive Development Activities, within the first eighteen (18) months immediately following the Closing Date, (I) Seller shall promptly notify Buyer of such acquisition, (II) Seller or its Subsidiary, as applicable, shall offer to sell to Buyer that portion of such acquired business and assets which constitute Competitive Activities (the "*Offered Assets*") on commercially reasonable terms as soon as reasonably practicable, (III) Buyer shall by written notice to Seller, within thirty (30) days of receipt of Seller's offer, either accept such offer, reject such offer or request an appraisal of the Offered Assets (Buyer's failure to timely respond will be deemed to be a rejection), (IV) if Buyer requests an appraisal, the parties shall agree upon an appraiser and shall jointly bear the cost of any such appraisal, (V) Buyer shall within thirty (30) days of receipt of such appraisal, notify Seller whether or not Buyer will purchase the Offered Assets at the appraised value thereof, (VI) in the event Buyer fails to respond or elects not to purchase the Offered Assets, Seller and its Subsidiaries shall have no further obligations to Buyer with respect to such Offered Assets under this Section 4.5 and Buyer shall reimburse Seller and its Subsidiaries for the portion of the cost of any such appraisal paid for by Seller or its Subsidiaries. Nothing contained herein shall be construed to prevent Seller or its Subsidiaries, as the case may be, from continuing to operate any such Offered Assets pending Buyer's decision whether or not to purchase such Offered Assets. Seller or its Subsidiaries, as the case may be, shall provide Buyer with all information reasonably requested by Buyer in connection with the offering for sale to Buyer of the Offered Assets.

4.6. *Use of Names and Logos*. Without limiting the generality of the exclusion in Section 1.1(b)(v), it is expressly agreed that neither Buyer nor any Designee is purchasing any right, title or interest in any names, trade names, trademarks, logos, service marks, domain names or other source indicators employing the words "C. R. Bard, Inc.," "Bard," "Luminexx," "Memotherm," "Monopty" or any term confusingly similar thereto (collectively, the "Seller's Trademarks and Logos"). After the Closing Date, Buyer shall not, and shall ensure that each of its Designees, Subsidiaries, Affiliates, employees and representatives do not represent itself or themselves as Seller or its Affiliates, or as employees or representatives of Seller or its Affiliates. As promptly as practicable, but in no event later than 180 days following the Closing Date, Buyer shall and shall cause each of its Designees, Subsidiaries and Affiliates to (i) cease all use of all Seller's Trademarks and Logos; and (ii) remove, strike over, overlabel or otherwise obliterate all Seller's Trademarks and Logos from all materials in their possession, including, without limitation, any business cards, stationery, displays, signs, promotional materials, manuals, forms and other materials; provided, that Buyer and each of its Designees, Subsidiaries and Affiliates shall cease using invoices, stationery and business cards containing the Seller's Trademarks and Logos no later than 30 days after the Closing Date (or such later time to the extent required by applicable Law) and shall remove, strike over, overlabel or otherwise obliterate the words "C. R. Bard, Inc." and "Bard" on all external Product packaging and from other materials no later than 60 days after the Closing Date (or such later time to the extent required by applicable Law); provided, further, that Buyer and its Designees may use the Seller's Trademarks and Logos if such use is necessary to maintain any registration of the Products with, or approval from, any foreign Governmental Authority, but only for so long as Buyer and its Designees, as applicable, are using commercially reasonable efforts to render such use of the Seller's Trademarks and Logos unnecessary. Notwithstanding the foregoing, with respect to (i) Products in the finished goods inventory at Closing or otherwise delivered to the Buyer or its Designees by the Seller and (ii) Supplied Products (as defined in the Transition and Supply Agreement) delivered to the Buyer pursuant to the Transition and Supply Agreement, Buyer and its Designees may sell off all of such products which have the Seller's Trademarks and Logos included in labeling or molded, etched or otherwise impressed thereon; provided, that Buyer and its Designees use commercially reasonable efforts to sell such Products in the ordinary course. Buyer shall and shall cause each of its Designees, Subsidiaries and Affiliates to take all reasonable actions to avoid any confusion as to any affiliation with Seller and its Affiliates.

4.7. *Notification of Certain Matters*. To the extent they have knowledge thereof, Seller shall give prompt notice to Buyer, and Buyer shall give prompt notice to Seller, of the occurrence, or non-occurrence, of any event the occurrence or non-occurrence of which will cause (i) any representation or warranty of Seller or Buyer, as the case may be, contained in this Agreement to be untrue or incorrect in any respect that would result in the condition to Closing set forth in Section 5.2(a) or 5.2(b), as the case may be, not being satisfied or (ii) Seller or Buyer, as the case may be, to fail to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it hereunder; *provided*, *however*, that the delivery of any notice pursuant to this Section 4.7 shall not limit or otherwise affect the remedies available hereunder to the party receiving such notice.

4.8. *Intellectual Property License to Seller*. Subject to Section 4.5, Buyer hereby grants to Seller and its Affiliates a perpetual, irrevocable, fully paid-up, worldwide, non-exclusive, transferable, assignable license to the patents listed in *Schedule 4.8* hereto and all related know-how, technology and trade secrets, in all cases only to the extent that such patents, related know-how, technology and trade secrets are within the Transferred Intellectual Property, with the license covered hereby to include, without limitation, the rights to make, have made, use, sell, distribute, offer to sell and import all current and future products, processes and services covered by any of the patents or any claims or inventions therein in connection with (a) snare devices sold as a component of gastrotomy kits or (b) devices used to perform suturing through an endoscope. This license shall not include the right to grant sublicenses, except that Seller and its Affiliates shall have the right to grant sublicenses to (i) manufacturers, in connection with their "have made" rights under the patents and (ii) customers, distributors, retailers and end users of Seller's or any of its Affiliates' products and services for the limited purpose of allowing (x) any of them to use and any of them other than end users to sell, offer to sell, import, lease or distribute to end users (or others in the distribution chain) Seller's or any of its Affiliates' products and services and (y) customers and end users to use Seller's or any of its Affiliates' products and services. This license shall become effective as of Closing and thereafter shall survive expiration or termination of this Agreement. This license shall be considered a license to "intellectual property" under the U.S. Bankruptcy Code and Seller shall be entitled to all rights and privileges of 11 U.S.C ss.365(n) with respect thereto.

4.9. *Intellectual Property License to Buyer for Eye-Wire*. Seller hereby grants to Buyer and its Designees a perpetual, irrevocable, fully paid-up, worldwide, non-exclusive, transferable, assignable license to the patent applications and any patents that may issue from such applications, know-how and trade secrets that are owned by Seller and that are in existence as of the Closing Date to make, have made, use, sell, distribute, offer to sell and import Eye-wire products (i.e., as described in U.S. Patent Application serial number 10\275,245) within the Endoscopic Gastrointestinal Products and Pulmonary Bronchoscopy Products fields of use (the "*Eye-wire Field of Use*"). The Eye-wire Field of Use shall exclude devices solely intended for use in endoscopic surgery procedures. This license shall not include the right to grant sublicenses, except that Buyer and its Designees shall have the right to grant sublicenses to (i) manufacturers, in connection with their "have made" rights under the patents and (ii) customers, distributors, retailers and end users of Buyer's or any of its Designees' products and services for the limited purpose of allowing (x) any of them to use and any of them other than end users to sell, offer to sell, import, lease or distribute to end users (or others in the distribution chain) Buyer's or any of its Designees' products and services and (y) customers and end users to use Buyer's or any of its Designees' products and services. This license shall become effective as of the Closing and thereafter survive expiration or termination of this Agreement. This license shall be considered a license to "intellectual property" under the U.S. Bankruptcy Code and Buyer shall be entitled to all rights and privileges of 11 U.S.C ss.365(n) with respect thereto.

4.10. *Intellectual Property License to Buyer for Licensed Products*. Seller hereby grants to Buyer and its Designees a perpetual, irrevocable, fully paid-up, worldwide, non-exclusive, transferable, assignable license within the Endoscopic Gastrointestinal Products and Pulmonary Bronchoscopy Products fields of use (the "*Licensed Field of Use*") to the patents, patent applications, know-how and trade secrets that are owned by Seller on the Closing Date, are not Assets and are necessary to make, have made, use, sell, distribute, offer to sell and import Licensed Products within the Licensed Field of Use. The term "*Licensed Products*" shall mean Products and products developed from research that (i) relates exclusively to the Products and (ii) is in existence on the Closing Date. This license will be deemed to cover any minor improvements or changes made to the Licensed Products after the Closing Date. This license shall not include the right to grant sublicenses, except that Buyer and its Designees shall have the right to grant sublicenses to (i) manufacturers, in connection with their "have made" rights under the patents and (ii) customers, distributors, retailers and end users of Buyer's or any of its Designees' Products and services for the limited purpose of allowing (x) any of them to use and any of them other than the end users to sell, offer to sell, import, lease or distribute to end users (or others in the distribution chain) Licensed Products and (y) customers and end users to use Licensed Products. This license shall become effective as of the Closing and thereafter survive expiration or termination of this Agreement. This license shall be considered a license to "intellectual property" under the U.S. Bankruptcy Code and Buyer shall be entitled to all rights and privileges of 11 U.S.C ss.365(n) with respect thereto.

4.11. *Best Efforts*. Subject to the terms and conditions of this Agreement, each party shall use its best efforts to cause the Closing to occur.

4.12. *Removal of Assets*. The Buyer agrees to assume responsibility for, and pay all expenses in connection with, removing, transporting and relocating those Assets which at the Closing are located at any of the facilities or service centers of Seller or its Subsidiaries, provided, that Seller shall transport the manufacturing Assets located at the Seller's facility in Reynosa, Mexico to McAllen, Texas at Buyer's expense; *provided*, *further*, that the risk of loss with respect to such Assets shall pass to the Buyer at the Closing. Seller agrees to give the Buyer, its agents and employees access to such facilities at reasonable times and upon reasonable notice for purposes of removing such Assets. Seller will provide assistance and cooperation, for example, in providing access to buildings on weekends, if required, in scheduling the removal of such items and will be responsible for moving its own equipment, and scheduling its own production, to the extent necessary for the removal of the Assets. Buyer shall be responsible for any damage caused as a result of its own negligence.

4.13. *Seller to Retain Physical Possession of Certain Purchased Assets*. Notwithstanding anything to the contrary set forth in this Agreement other than Section 4.4(c), at the Closing Buyer will purchase, acquire and accept from Seller or its Subsidiaries, as appropriate, all of the Seller's and its Subsidiaries' right, title and interest as of the Closing Date in and to all of the Assets; *provided*, that from the Closing through the termination of the Transition and Supply Agreement, Seller shall retain physical possession of the Assets identified in *Schedule 4.13*, for the sole purpose of fulfilling Seller's obligations under the Transition and Supply Agreement to act as Buyer's interim supplier and manufacturer of Products. Seller shall maintain and care for such Assets in a manner consistent with Seller's past practice with respect to the maintenance and care thereof. Upon the occurrence of the termination of the Transition and Supply Agreement and subject to the terms thereof, Seller shall cooperate with Buyer to make such arrangements as Buyer may reasonably request to transfer possession by Seller to Buyer or Buyer's Designees, for no additional consideration but at Buyer's expense, of all such Assets then in Seller's possession.

4.14. *Non-Solicitation*. For a period of two (2) years from the date of the Closing, Seller agrees, and agrees to cause its Subsidiaries, not to, directly or indirectly, solicit for employment or hire any Transferred Employee. The restrictions contained in the preceding sentence, however, shall not preclude general, non-targeted solicitations of employment made by Seller or any of its Subsidiaries provided so long as the Seller does not hire for employment any Transferred Employee during such two year period. Notwithstanding the foregoing, Seller or any of its Subsidiaries may solicit or hire any Transferred Employee (a) whose employment with Buyer or any of its Designees or Subsidiaries was terminated by the Buyer or any of its Designees or Subsidiaries or (b) whose employment has been terminated for a period of at least six (6) months.

4.15. *Data Transfer*. (a) Seller shall make reasonably available sufficient personnel and resources, and shall use all commercially reasonable efforts to transfer a copy of all electronic data and non-electronic data included in the Assets relating exclusively to the (i) sales, customer base, products, ordering and customer service functions and (ii) manufacturing, quality system requirements (including complaint handling, investigation and response) and electronic and on-demand labeling of the Business, in the case of clause (i), subject to applicable Law, no later than five (5) days prior to Closing and in the case of clause (ii) within a reasonable period of time following Closing. Buyer acknowledges that any information delivered or made available to it prior to the Closing is subject to the Confidentiality Agreement and, in the case of the information contemplated by clause (i) above, is being provided prior to the Closing solely for the purpose enabling Buyer to conduct the Business from and after the Closing. Buyer further acknowledges that (1) Seller shall have no obligation to provide the information contemplated by clause (i) prior to the Closing if the waiting period under the Antitrust Improvements Act (including any extensions thereof) shall not have expired and (2) it shall return such information to Seller promptly on request if the Closing does not take place in such five-day period.

(b) Until such transfer of data is complete, Seller shall provide Buyer with reasonable access to such data on Seller's computer systems, subject to appropriate security and confidentiality measures, and reasonably provide personnel and resources sufficient to process complaint handling, investigation and quality systems as have been used exclusively in the Business.

4.16. *Customer Notification*. Promptly following the Closing, Buyer may send a letter, executed by both Seller and Buyer, to customers of the Business informing such customers that Buyer has purchased the Business from Seller; provided, that such letter shall be in a form reasonably acceptable to the parties. The parties will use commercially reasonable efforts to agree on the form of letter as promptly as practicable after the date hereof. Nothing herein shall limit the ability of Seller and its Subsidiaries to communicate with customers of the Business with respect to Sellers' and its Subsidiaries' remaining business.

4.17. *Release of Employee Agreements*. Seller shall not release any employee from any obligation under any agreement identified in items 1-4 in Schedule 1.1(b)(ix) to the extent relating to the Business without Buyer's prior written consent.

4.18. *Transition Arrangement*. Promptly after the execution of this Agreement and prior to Closing, the parties will negotiate in good faith to reach a mutually acceptable transition arrangement for Seller to provide order, shipping, global information technology and other necessary support if ConMed should reasonably determine that it will require such support.

ARTICLE V

CONDITIONS PRECEDENT

5.1. *Conditions Precedent to Obligations of Parties*. The respective obligations of Buyer and Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction, at or prior to the Closing Date, of each of the following conditions:

(a) *No Injunction*. At the Closing Date, there shall be no injunction, restraining order, decision or decree of any nature of any Governmental Authority of competent jurisdiction that is in effect that makes illegal, restrains or prohibits in any respect the consummation of the transactions contemplated hereby. Notwithstanding the foregoing, the condition set forth in this Section 5.1(a) shall not be a condition to the obligations of a party to consummate the transactions contemplated by this Agreement if the consummation of the transactions contemplated by this Agreement, notwithstanding that the condition set forth in this Section 5.1(a) has not been satisfied, would not be reasonably likely to have a material adverse effect on such party or any of its Subsidiaries.

(b) *Regulatory Authorizations*. All (i) consents, approvals, authorizations and orders of Governmental Authorities as are necessary in connection with the lawful transfer of the Assets to Buyer and/or Buyer's Designees and the execution and performance of the Transaction Agreements shall have been obtained; and (ii) applicable waiting periods, including extensions thereof, specified under the Antitrust Improvements Act and any applicable foreign antitrust Laws with respect to the transactions contemplated by this Agreement shall have lapsed or been terminated and any investigations relating to the transactions contemplated hereby that may have been opened by either the Department of Justice or the FTC by means of a request for additional information or otherwise shall have terminated. Notwithstanding the foregoing, the condition set forth in this Section 5.1(b) shall not be a condition to the obligations of a party to consummate the transactions contemplated by this Agreement if the consummation of the transactions contemplated by this Agreement, notwithstanding that the condition set forth in this Section 5.1(b) has not been satisfied, would not be reasonably likely to have a material adverse effect on such party or any entity that would be a Subsidiary of such party after the Closing.

5.2. *Conditions Precedent to Obligation of Buyer*. The obligation of Buyer to consummate the transactions contemplated by this Agreement is subject to the satisfaction or waiver by Buyer at or prior to the Closing Date of each of the following additional conditions:

(a) *Accuracy of Representations and Warranties*. The representations and warranties of Seller contained herein shall be true and correct as of the date hereof and at, and as of, the Closing Date, with the same force and effect as though made at and as of the Closing Date (except for changes permitted or contemplated by this Agreement and except that, to the extent any representation or warranty is expressly made as of a specified date, it need be true only as of such date), except for any failures to be true and correct which would not be reasonably likely to have a Material Adverse Effect (it being understood that, for purposes of determining the truth and correctness of Seller's representation and warranties, all Material Adverse Effect and materiality qualifiers contained in such representations and warranties shall be disregarded).

(b) *Performance of Agreement*. Seller and its Subsidiaries shall have in all material respects performed all obligations and agreements and complied with all covenants contained in this Agreement to be performed or complied with by Seller and/or its Subsidiaries prior to or at the Closing.

(c) *Certificate*. Buyer shall have received a certificate of Seller, dated as of the Closing Date, executed on behalf of Seller by any officer thereof, to the effect that, to the knowledge of such officer, the conditions specified in paragraphs (a) and (b) above have been fulfilled.

(d) *Ancillary Agreements*. The Ancillary Agreements shall have been executed and delivered by Seller or any of its Subsidiaries to Buyer and shall have become effective, except the Partial Asset Sale Agreement which shall be executed and delivered and become effective at the French Closing.

(e) *Required Items*. Seller shall have made or caused to be made delivery to Buyer of the items required by Section 2.2(a).

5.3. *Conditions Precedent to Obligation of Seller*. The obligation of Seller to consummate the transactions contemplated by this Agreement is subject to the satisfaction or waiver by Seller at or prior to the Closing Date of each of the following additional conditions:

(a) *Accuracy of Representations and Warranties*. The representations and warranties of Buyer contained herein shall be true and correct as of the date hereof and at, and as of, the Closing Date, with the same force and effect as though made at and as of the Closing Date (except for changes permitted or contemplated by this Agreement and except that, to the extent any representation or warranty is expressly made as of a specified date, it need be true only as of such date), except for any failures to be true and correct which would not be reasonably likely to have a material adverse effect on the ability of the Buyer to consummate the transactions contemplated by this Agreement or perform its obligations under this Agreement or the Transaction Agreements (it being understood that, for purposes of determining the truth and correctness of Buyer's representation and warranties, all Material Adverse Effect and materiality qualifiers contained in such representations and warranties shall be disregarded).

(b) *Performance of Agreements*. Buyer and its Designees and Subsidiaries shall have in all material respects performed all obligations and agreements and complied with all covenants contained in this Agreement to be performed or complied with by Buyer and/or its Designees and Subsidiaries prior to or at the Closing, including, without limitation, Buyer's obligations under Section 2.3.

(c) *Certificate*. Seller shall have received a certificate of Buyer, dated as of the Closing Date, executed on behalf of Buyer by any officer thereof, to the effect that, to the knowledge of such officer, the conditions specified in paragraphs (a) and (b) above have been fulfilled.

(d) *Ancillary Agreements*. The Ancillary Agreements shall have been executed and delivered by Buyer or one of its Designees to Seller and shall have become effective, except the Partial Asset Sale Agreement which shall be executed and delivered and shall become effective at the French Closing.

(e) *Required Items*. Buyer shall have made or caused to be made delivery to Seller of the items required by Section 2.3.

ARTICLE VI

PROVISIONS AS TO TAX MATTERS

6.1. *Transfer Taxes*. Buyer shall pay all transfer taxes or fees, sales taxes, value added taxes (but excluding value added taxes arising out of the transfer of the manufacturing Assets located on the Closing Date at Seller's facility in Reynosa, Mexico), registration taxes, recordation or similar taxes or fees, deed, stamp or other taxes, duties, recording charges, fees, or other similar cost or expense of any kind required in connection with the effectuation of the transactions and documentation contemplated by this Agreement (whether such tax, duties or fee, cost or expense is imposed on Buyer, Seller or any Subsidiary of Buyer or Seller).

6.2. *Allocation of Purchase Price*. The parties will allocate the Purchase Price (including Assumed Liabilities) prior to Closing based upon a mutually satisfactory valuation analysis to be jointly prepared by the parties prior to the Closing. The allocation of the Purchase Price among assets sold by Seller or a Subsidiary of Seller, shall be prepared in accordance with the rules under Section 1060 of the Code and the Treasury Regulations promulgated thereunder; *provided*, *however*, in the event of any adjustment to the Purchase Price pursuant to this Agreement (i) Seller shall promptly prepare and furnish to Buyer an amendment to such allocation, (ii) Buyer may promptly, but in no event later than 10 days after receipt of such amendment, comment on the amendment and (iii) the parties shall consult with each other to arrive at a mutually satisfactory amendment to the allocation. Seller and Buyer agree to act in accordance with the computations and allocations resulting from the procedures set forth in this Section 6.2 (including, without limitation, any modifications pursuant to the proviso immediately preceding this sentence), and shall not take any position inconsistent therewith on any Tax Return (including, without limitation, any forms or reports required to be filed pursuant to Section 1060 of the Code, the Treasury Regulations promulgated thereunder or any provisions of local, state and foreign Law) or before any taxing authority, except as required by applicable Law.

ARTICLE VII

LABOR MATTERS, EMPLOYEE RELATIONS AND BENEFITS

7.1. *Scheduled Employees/Transferred Employees*.

(a) *Scheduled Employees*. Prior to the Closing, Buyer will take no action to cause Seller or any of its Subsidiaries to terminate the employment of any employee of Seller or its Subsidiaries prior to the Closing Date (or, in the case of French Employees, the French Closing Date, or, in the case of the Glens Falls Employees, the Relocation Date), and neither Seller nor any of its Subsidiaries shall be under any obligation to terminate any employee prior to the Closing Date (or, in the case of French Employees, the French Closing Date, or, in the case of the Glens Falls Employees, the Relocation Date). The employees of the Business who are listed on *Schedule 7.1(a)(i)* (regardless of whether any such employee is actively at work, on vacation, on an approved leave of absence (paid or unpaid), on layoff status or otherwise) shall hereinafter be referred to as the "*Scheduled Employees*" (which Schedule shall be updated as of the Closing (or French Closing, as applicable) for new hires or terminations following the date of this Agreement). The employees of the Business who are employed at Seller's Glens Falls, New York facility and are listed on *Schedule 7.1(a)(ii)* (regardless of whether any such employee is actively at work, on vacation, on an approved leave of absence (paid or unpaid), on layoff status or otherwise) shall hereinafter be referred to as the "*Glens Falls Employees*" (which Schedule shall be updated as of the Relocation Date for new hires or terminations following the date of this Agreement). The Scheduled Employees whose principal location of employment is (x) in the United States (but for avoidance of doubt, excluding Glens Falls Employees) shall be hereinafter referred to as the "*U.S. Employees*", (y) in France shall be hereinafter referred to as the "*French Employees*" and (z) in the United Kingdom shall be hereinafter referred to as the "*UK Employees*."

(b) *U.S. Transferred Employees*. (i) Prior to the Closing Date, Buyer shall, or shall cause one of Buyer's Designees to, offer employment (and Seller shall permit such offer to be made), to commence on the Closing Date, to each U.S. Employee in substantially the same job and on substantially the same terms (including salary, wages, bonus and commission opportunity, job responsibilities and location) as such U.S. Employee had immediately prior to the Closing Date. Notwithstanding the foregoing, the following treatment shall apply to the categories of U.S. Employees described below: (A) any U.S. Employee who does not come to work on the Closing Date (other than by reason of vacation, bereavement leave, scheduled personal time off, short term or long term disability that is covered by one of Seller's insured disability policies or military leave) (an "*Inactive Employee*") shall commence employment with Buyer (or its Designee) on the terms described above in this clause (i), on the "*Delayed Employment Date*", which shall mean the date, if any, that such Inactive Employee accepts employment with Buyer (or its Designee) on or before the tenth business day following the Closing Date (the "*Offer Extension Date*"); (B) any U.S. Employee who is covered by Seller's insured short term disability or long term disability policies on the Closing Date (each a "*Disabled Employee*") shall continue to be covered by Seller's applicable disability policies and remain employed by Seller unless he or she returns to active employment within six months following the Closing Date (*provided*, that the date of such return to active employment is within 360 days following commencement of short term disability or 180 days following the commencement of long term disability, as applicable), at which time such person shall be offered by Buyer (or its Designee) employment on the terms described above in this clause (i) and, if such offer is accepted, treated thereafter by Buyer (or its Designee) as a U.S. Transferred Employee; and (C) any U.S. Employee who is on military leave on the Closing Date (each, a "*Military Leave Employee*") shall be offered employment by Buyer (or its Designee) on the terms described above in this clause (i) if such person returns to employment within the time period during which his or her job is protected under the Uniform Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. ss.4312 ("USERA"), if such offer is accepted, treated thereafter by Buyer (or its Designee) as a U.S. Transferred Employee. Promptly following receipt of notice from Seller of the aggregate cost to Seller of employing the Inactive Employees through and including the Offer Extension Date (other than Inactive Employees who become covered by Seller's insured short term disability or long term disability policies on or before the Offer Extension Date without having returned to active employment), including to the extent applicable salary continuation and bonus accrual, Buyer will pay such amount to Seller in a cash lump sum.

(ii) At least fifteen business days prior to the delivery to Buyer of the manufacturing Assets located as of Closing at the Seller's Glens Falls, New York facility (the "*Relocation Date*") pursuant to the Transition and Supply Agreement between Seller and Buyer, dated as of the date hereof, Buyer shall, or shall cause one of Buyer's Designees to, offer employment (and Seller shall permit such offer to be made), to commence on the Relocation Date, to each Glens Falls Employee in substantially the same job and on substantially the same terms (including salary, wages, bonus and commission opportunity and job responsibilities) as such Glens Falls Employee had immediately prior to the Relocation Date, except that such job shall be located in Utica, New York. Notwithstanding the foregoing, the following treatment shall apply to the categories of Glens Falls Employees described below: (A) any Glens Falls Employee who does not come to work on the Relocation Date (other than by reason of vacation, bereavement leave, scheduled personal time off, short term or long term disability that is covered by one of Seller's insured disability policies or military leave) (a "*Glens Falls Inactive Employee*") shall commence employment with Buyer (or its Designee) on the terms described above in this clause (ii), on the "*Glens Falls Delayed Employment Date*", which shall mean the date, if any, that such Glens Falls Inactive Employee accepts employment with Buyer (or its Designee) on or before the tenth business day following the Relocation Date (such tenth business day, the "*Glens Falls Offer Extension Date*"); (B) any Glens Falls Employee who is covered by Seller's insured short term disability or long term disability policies on the Relocation Date (each a "*Glens Falls Disabled Employee*") shall continue to be covered by Seller's applicable disability policies and remain employed by Seller unless he or she returns to active employment within six months following the Relocation Date (*provided*, that the date of such return to active employment is within 360 days following commencement of short term disability or 180 days following the commencement of long term disability, as applicable), at which time such person shall be offered by Buyer (or its Designee) employment on the terms described above in this clause (ii) and, if such offer is accepted, treated thereafter by Buyer (or its Designee) as a U.S. Transferred Employee (as defined below); and (C) any Glens Falls Employee who is on military leave on the Relocation Date (each, a "*Glens Falls Military Leave Employee*") shall be offered by Buyer (or its Designee) employment on the terms described above in this clause (ii) if such person returns to employment within the time period during which his or her job is protected under USERA and, if such offer is accepted, treated thereafter by Buyer (or its Designee) as a U.S. Transferred Employee. Promptly following receipt of notice from Seller of the aggregate cost to Seller of employing the Glens Falls Inactive Employees through and including the Glens Falls Offer Extension Date (other than Glens Falls Inactive Employees who become covered by Seller's insured short term disability or long term disability policies on or before the Glens Falls Offer Extension Date without having returned to active employment), including to the extent applicable salary continuation and bonus accrual, Buyer will pay such amount to Seller in a cash lump sum.

(iii) Those (A) U.S. Employees (excluding Inactive Employees) who on or before the Closing Date (or such later date as applicable for each Disabled Employee and Military Leave Employee) accept employment with Buyer or one of Buyer's Designees, (B) Glens Falls Employees (excluding Glens Falls Inactive Employees) who on or before the Relocation Date (or such later date as applicable for each Glens Falls Disabled Employee and Glens Falls Military Leave Employee) accept employment with Buyer or one of Buyer's Designees, (C) Inactive Employees who commence active employment with Buyer (or its Designee) on or before the Offer Extension Date and (D) Glens Falls Inactive Employees who commence active employment with Buyer (or its Designee) on or before the Glens Falls Offer Extension Date shall hereinafter collectively be referred to as "*U.S. Transferred Employees*".

(c) *Non-United States Transferred Employee*. Commencing on the Closing Date (or in the case of French Employees, the French Closing Date), Buyer shall, or shall cause one of Buyer's Designees to, employ each French Employee and UK Employee in the same job and on the same terms (including salary, wages, bonus and commission opportunity, job responsibilities and location) as such French Employee and UK Employee had immediately prior to the Closing Date (or in the case of French Employees, the French Closing Date), and each such French Employee and UK Employee shall hereinafter be referred to as a "*Non-United States Transferred Employee*" and together with the U.S. Transferred Employees, the "*Transferred Employees*." The UK Employees' contracts of employment will be deemed to have transferred to Buyer or the appropriate Buyer Designee pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 1981. The French Employees' contracts of employment will be deemed to have transferred to Linvatec France S.A.R.L. on the French Closing Date pursuant to Article L 122-12 of the French Labor Code.

(d) *Termination from Seller and its Subsidiaries and Declined Offers*. Seller shall cease to employ the Scheduled Employees and the Glens Falls Employees, and the Scheduled Employees and the Glens Falls Employees shall cease to actively participate in the benefit plans, programs and arrangements of Seller and its Subsidiaries commencing on (i) the earlier of the Delayed Employment Date or Offer Extension Date for any Inactive Employee, or the earlier of the Glens Falls Delayed Employment Date or Glens Falls Offer Extension Date for any Glens Falls Inactive Employee (or, if earlier, the date any such Inactive Employee or Glens Falls Inactive Employee otherwise declines Buyer's or its Designee's offer of employment), (ii) the first date that a Disabled Employee or a Glens Falls Disabled Employee is no longer covered by any of Seller's insured disability policies, (iii) the first date that a Military Leave Employee or a Glens Falls Military Leave Employee returns from such military leave or, if earlier, no longer has job protection under USERA, (iv) the Closing Date (or in the case of French Employees, the French Closing Date) for any Scheduled Employee not covered by (i), (ii) or (iii) above, or (iv) on the Relocation Date for any Glens Falls Employee not covered by (i), (ii) or (iii) above; *provided*, *however*, that Seller may elect to offer employment to any Glens Falls Employee. With respect to any Glens Falls Employee or Scheduled Employee who declines (expressly or otherwise) Buyer's or its Designee's offer of employment (including, without limitation, any Inactive Employee or Glens Falls Inactive Employee who does not commence active employment with Buyer (or its Designee) on or before the Offer Extension Date or the Glens Falls Offer Extension Date, as applicable), Buyer or its Designee shall provide reasonable outplacement services and shall assume and be liable for any and all Liabilities arising out of or in connection with the termination of such Scheduled Employee's or Glens Falls Employee's employment; *provided*, *further*, that (I) with respect to any Glens Falls Employee (whose employment is terminated by Seller) or (II) in the case of any Scheduled Employee who receives an offer from Buyer or its Designee that fails to comply with the terms of this Section 7.1 and (in addition to any other remedies to which Seller may be entitled), in each case, who declines Buyer's (or one of its Designee's) offer of employment and who is eligible immediately prior to the Closing Date or the Relocation Date, as applicable, to participate in the C. R. Bard, Inc. Severance Plan attached as Exhibit B (the "*Seller Severance Plan*"), such Glens Falls Employee or Scheduled Employee shall be deemed to have a "Covered Termination" (as defined in the Seller Severance Plan) and shall be entitled to receive a severance benefit from Buyer no less than the amount to which such employee would be entitled to receive in respect of a Covered Termination under the terms and conditions of the Seller Severance Plan as in effect on the date of this Agreement (whether or not any such termination would otherwise satisfy the requirements for such a Covered Termination under the Seller Severance Plan, and without regard to the exclusion under the Seller Severance Plan for employees who, in the event of the sale or change in ownership of any part of the Company's operations, are offered employment with the new owner in any capacity); *provided*, *further*, that French Employees and UK Employees shall receive such other severance as required by applicable Law or any applicable agreement in effect on the date hereof.

7.2. *Benefits for Transferred Employees*.

(a) From and after the "Commencement Date", which shall mean, as applicable, the Closing Date, the French Closing Date, the Relocation Date or such other applicable employment commencement date with respect to Inactive Employees, Glens Falls Inactive Employees, Disabled Employees, Glens Falls Disabled Employees, Military Leave Employees or Glens Falls Military Leave Employees, but limited to the two years immediately following the Closing Date for the U.S. Transferred Employees, Buyer and/or Buyer's Designees, as applicable, shall provide Transferred Employees with (i) such cash compensation and bonus and commission opportunities that are not less than the cash compensation and bonus and commission opportunities as those to which the Transferred Employees are entitled immediately prior to the Closing Date, the French Closing Date or the Relocation Date, as applicable, and (ii) such employee benefits plans, programs and arrangements that are no less favorable than those Buyer provides to its similarly situated employees as of the date of this Agreement or, with respect to the Non-United States Transferred Employees, if greater, such other benefits as required by applicable Law; *provided*, *however*, that from and after the Commencement Date, but limited to the two years immediately following the Closing Date for the U.S. Transferred Employees, each Transferred Employee shall be entitled to no less annual vacation time than that amount to which he or she was entitled under the plans and policies of Seller and its Subsidiaries immediately prior to the Closing, the French Closing Date or the Relocation Date, as applicable; *provided*, *further*, that from the Commencement Date through December 31, 2004 (or, in the case of the Glens Falls Employees, through the end of the calendar year during which the Relocation Date occurs, or, in the case of French Employees, within the time limits set by applicable Law or in the case of the UK Employees, within the time limits set forth in their respective employment agreements set forth in *Schedule 7.3(b)* or set forth by applicable Law), the Transferred Employees shall be permitted to use any unused paid time off earned on and prior to the Commencement Date under the applicable paid time off policy of Seller or any if its Subsidiaries (collectively, the "*Seller's PTO Policy*") and, during such period, Buyer shall maintain for the benefit of each Transferred Employee a paid time off policy that is the same as the applicable Seller's PTO Policy, and, promptly following the end of such period, subject to applicable law, Buyer shall make a cash payment to each U.S. Transferred Employee in the amount, if any, equal to the remaining paid time off accrued by such U.S. Transferred Employee; *provided*, *further*, that from the Commencement Date through December 31, 2005 (or in the case of Non-United States Employees, within the time limits set by applicable Law), contributions or other out-of-pocket amounts required to be paid by the Transferred Employees under health and welfare plans and programs of Buyer or its Designees shall be no greater than those that would be required by Seller's health and welfare plans and programs as in effect as of the Closing, the French Closing or the Relocation Date, as applicable. In addition to the foregoing, from the Commencement Date through December 31, 2004 (or, in the case of French Employees, within the time limits set by Law, or, in the case of the Glens Falls Employees, through the end of the calendar year during which the Relocation Date occurs, or, in the case of French Employees, within the time limits set by applicable Law or in the case of the UK Employees, within the time limits set forth in their respective employment agreements set forth in *Schedule 7.3(b)* or set forth by applicable Law) (i) Transferred Employees shall be permitted to use any unused vacation earned on or prior to the Commencement Date and (ii) each Transferred Employee will have job responsibilities and, except with respect to the Glens Falls Employees whose job location shall be in Utica, New York, a job location which are, with respect to the Non-United States Transferred Employees, the same and, with respect to the U.S. Transferred Employees, substantially the same as immediately prior to the Closing Date, the French Closing Date or the Relocation Date, as applicable.

(b) Solely for purposes of calculating eligibility and vesting service credit under employee pension and welfare benefit plans of Buyer and its Subsidiaries and Affiliates, each Transferred Employee shall be credited with the amount of service for which they received credit prior to the Commencement Date under the Benefit Plans for service with the Business, the Seller and with any Subsidiary or Affiliate thereof ("*Transferred Service*"); *provided*, that Transferred Service shall also include benefit accrual with respect to vacation, paid time off, service awards and severance entitlement. Transferred Service shall apply with respect to such other aspects of employment compensation as service and seniority. Accrual of benefits with Buyer and/or its Designees (other than vacation, paid time off, service awards and severance) shall commence as of the Commencement Date.

7.3. *Severance Policy and Other Agreements.* (a) *Minimum Severance for Certain Transferred Employees*. Buyer shall be liable for any and all Liabilities arising on or after the Closing Date, the French Closing Date or the Relocation Date, as applicable that arise out of or in connection with the termination of any Scheduled Employee's or Glens Falls Employee's employment. Any Transferred Employee who, immediately prior to the Closing Date, the French Closing Date or the Relocation Date, as applicable, was covered by the Seller Severance Plan or a severance plan of any of its Subsidiaries and whose employment with Buyer (or Buyer's Designee) is terminated by Buyer or any Subsidiary or Affiliate of Buyer for other than cause (as such term is defined in the Seller Severance Plan or the applicable severance plan of any of Seller's Subsidiaries) on or during the twelve months immediately following the Closing Date, the French Closing Date or the Relocation Date, as applicable, shall be deemed to have a "Covered Termination" (as defined in the Seller Severance Plan or the applicable severance plan of any of Seller's Subsidiaries) and shall be entitled to receive a severance benefit from Buyer no less than the amount to which such employee would be entitled to receive in respect of a Covered Termination under the terms and conditions of the Seller Severance Plan or the applicable severance plan of any of Seller's Subsidiaries as in effect on the date of this Agreement in lieu of any other severance or similar benefit (whether or not any such termination would otherwise satisfy the requirements for such a Covered Termination under the Seller Severance Plan or the applicable severance plan of any of Seller's Subsidiaries, and without regard to the exclusion under the Seller Severance Plan or the applicable severance plan of any of Seller's Subsidiaries for employees who, in the event of the sale or change in ownership of any part of the Company's operations, are offered employment with the new owner in any capacity); *provided*, *however*, that Non-United States Transferred Employees shall receive such other severance as required by applicable Law or any agreement in effect on the date hereof including without limitation, with respect to the French Employees who became Transferred Employees, pursuant to Article L. 122-12 of the French Labor Code. Buyer or its Designee shall also provide reasonable outplacement services to each such terminated Transferred Employee described in this Section 7.3(a). Any severance paid to any Transferred Employee pursuant to this Section 7.3(a) shall be in lieu of any severance payment to which such Transferred Employee may otherwise claim under Buyer or its Designee's severance policy.

(b) *Severance/Employment Agreements of Transferred Employees*. Buyer shall assume and honor or cause its Designee to assume and honor all severance agreements and employment agreements with individual Transferred Employees that are (i) listed on *Schedule 7.3(b)* and in effect on the date of this Agreement or (ii) entered into after the date hereof and in accordance with this Agreement.

7.4. *2004 Bonus*. With respect to the Transferred Employees, Seller will cause bonuses under any applicable bonus plan of Seller or any of its Subsidiaries, as in effect on the date hereof (the "Bonus Plans"), to be accrued on the Final Statement of Assets and Liabilities in an amount equal to the pro rata portion of the bonuses (based on the portion of the 2004 fiscal year completed prior to the Closing Date) to which such Transferred Employees would have been entitled for the 2004 fiscal year based on actual performance measured through the Closing Date and annualized in respect of such fiscal year (such bonus for the full 2004 fiscal year based on annualized actual performance, the "Full Bonus"). On December 31, 2004, Buyer shall pay a bonus to each Transferred Employee employed on such date that is not less than such Transferred Employee's Full Bonus under the Bonus Plans; provided, however, that if a Transferred Employee's employment is terminated by Buyer or any of its Affiliates prior to payment of such Full Bonus, the Buyer shall pay to the Transferred Employee, promptly after such termination of employment, an amount no less than the pro rata portion of the Full Bonus based on the portion of the 2004 fiscal year completed on and prior to the date of such termination of employment.

7.5. *Credit for Deductibles*. With respect to any Transferred Employee who is covered by or participates in any insurance or other applicable pension or welfare benefit plan or program of Seller or any of its Subsidiaries, Buyer will, or will cause one of its Designees to, on and following the Commencement Date, (i) waive all limitations as to preexisting conditions, exclusions and waiting periods with respect to participation and coverage requirements applicable to Transferred Employees under any pension or welfare plan that such employees may be eligible to participate in on or after the Commencement Date and (ii) provide each Transferred Employee with credit for any co-payments and deductibles paid on or prior to the Commencement Date in satisfying any applicable deductible or out-of-pocket requirements under any welfare plans that such employees are eligible to participate in on or after the Commencement Date.

7.6. *Seller and Subsidiary Plans*. (a) *Defined Contribution Plans*. As of the Closing Date, Seller shall cause the active participation by Transferred Employees in the C. R. Bard, Inc. Employees' Savings Trust 401(k) Plan (the "*Seller's Savings Plan*") to cease and for the account balance of each Transferred Employee participating in such plan to become vested and non-forfeitable as of the Closing Date. The Seller's Savings Plan shall be amended to provide that (A) there shall be no contributions thereto with respect to the Transferred Employees for periods after the Closing Date and (B) all Transferred Employee account balances shall be fully vested and non-forfeitable. With respect to any Benefit Plan in any jurisdiction other than the United States that is a defined contribution-type plan from which assets are to be transferred to the Buyer, the principles established in this Section 7.6(a) shall be followed, subject to applicable Law.

(b) *Defined Benefit Plan*. As of the Closing Date, Transferred Employees shall cease to accrue service credit or benefits under the Employees' Retirement Plan of C. R. Bard, Inc. (the "*Seller's Defined Benefit Plan*") and Seller shall cause each participating Transferred Employee to become vested in that person's accrued benefit under the Seller's Defined Benefit Plan. Transferred Employees' rights to benefits under the Seller's Defined Benefit Plan shall be determined in accordance with the terms of such Defined Benefit Plan and no assets or Liabilities will be transferred therefrom. Seller shall retain all Liabilities with respect to Seller's Defined Benefit Plan.

7.7. *Employee Notification Requirements*. (a) *WARN or Analogous Laws*. Neither Buyer nor its Designees shall, without Seller's consent, with respect to the Business (i) within 90 days following the Closing Date (or, in the case of French Employees, the French Closing Date) effect any "plant closing" or "mass layoff", as such terms are defined in the Worker Adjustment and Retaining Notification Act of 1988 (" *WARN*"), or any partial closing to the extent a partial closing would result in Liability under WARN or (ii) effect any dismissals or "collective dismissals" or other analogous program of employment terminations to the extent such actions would implicate foreign Laws analogous to WARN, (including, without limitation, any regulations, statutes, rules or orders implementing such directives or acts (collectively, the "*Directives*")). Seller shall advise Buyer at or prior to Closing of all involuntary employment losses which occurred within the Business within the ninety (90) days prior to the Closing Date, and whether or not notice in compliance with WARN was given in respect of each such involuntary employment loss. Seller has not been made aware of any plans on the part of the Buyer or its Designees to carry out within 90 days of the Closing a plant closing or mass layoff within the meaning of WARN with respect to the Business. Buyer and its Designees shall take such action as is necessary to insure that any involuntary employment terminations relating to the Business that may be effected on or after the Closing (or, in the case of French Employees, the French Closing), whether in connection with the transactions contemplated by this Agreement or otherwise, comply with the labor Laws and agreements covering Non-United States Employees, including without limitation, the Directives. Seller shall take such action as is necessary to insure that any involuntary employment terminations relating to the Business that may be effected on or before the Closing, whether in connection with the transactions contemplated by this Agreement or otherwise, to comply with the labor Laws and agreements covering Non-United States Employees, including without limitation, the Directives.

(b) *WARN and Other Notifications*. The Buyer is and shall be responsible for either giving or procuring that notice is given as may be required to any Transferred Employees or Governmental Authorities required under WARN or any analogous state, local or foreign Law in connection with or as result of the transactions contemplated by this Agreement or any employment losses which occur in the Business on or after the Closing Date (or, in the case of French Employees, the French Closing Date). Buyer and its Designees agree to cooperate with Seller whether by the provision of information or otherwise so as to enable Seller to comply, and Seller shall, to the extent it is an obligations of Seller, comply with any notification and consultation requirements arising from the sale of the Business as may be required by labor Laws, Directives and agreements governing Non-United States Employees of the Seller and/or its Subsidiaries (including, without limitation, any notification to and consultation obligations with the European Communications Network).

(c) *Terminations in Compliance with Foreign Laws*. To the extent that any Liabilities or obligations arise in respect of such Non-United States Employees by virtue of a failure to comply with applicable Law or Directives or otherwise related to the employment or termination of employment of such Non-United States Employees after the Closing Date (or, in the case of French Employees, the French Closing Date), Buyer shall be responsible for such Liabilities and obligations. To the extent that any liabilities or obligations arise in respect of such Non-United States Employees by virtue of a failure to comply with applicable Law or Directives or otherwise related to the employment of such Non-United States Employees on or before the Closing Date (or, in the case of French Employees, the French Closing Date), save where any such failure relates to or arises from any act or omission of Buyer or its Designees (in which case Buyer shall be responsible), Seller shall be responsible for such liabilities and obligations.

7.8. *No Third Party Beneficiaries*. Nothing contained in this Article VII shall confer upon any of the current or former employees of Seller, Buyer or any of their Subsidiaries, any rights or remedies of any kind whatsoever under or by reason of this Agreement (including, without limitation, any right to employment or continued employment for a specific period, or any right to a particular benefit).

ARTICLE VIII

INDEMNIFICATION

8.1. *Indemnification*. (a) *Buyer's Indemnification Obligations*. On and after the Closing Date, Buyer hereby agrees to indemnify, defend and hold harmless Seller and each of its directors, officers, employees and Subsidiaries (collectively, the "*Seller Indemnified Parties*") from and against, and will pay to the Seller Indemnified Parties the amount of, any and all claims, losses, damages, costs and reasonable attorney's fees and expenses (collectively, "*Damages*") imposed on, sustained, incurred or suffered by or asserted against them in respect of, but only in respect of:

(i) any breach of Buyer's representations and warranties in this Agreement; *provided*, that subject to Section 8.5 hereof, any indemnification claim under this Section 8.1(a)(i) must be made within the period of survivability set forth in Section 3.3;

(ii) Buyer's failure, or the failure of any Designee or Subsidiary of Buyer, to perform or otherwise fulfill any of its agreements, covenants, obligations or undertakings hereunder;

(iii) the Assumed Liabilities;

(iv) all Liabilities arising out of the operation or ownership of the Business by the Buyer, including, but not limited to, any claim relating to any Legal Proceeding or any property damage, personal injury, death, product recall, product return or other similar Liability arising out of products that are manufactured or distributed by Buyer or any of its Subsidiaries or other Affiliates subsequent to the Closing Date (other than to the extent arising out of or resulting from the manufacture, shipment, storage, handling or labeling (or any acts or omissions in respect thereof) of such products by Seller, any of its Subsidiaries, any of its Affiliates or any of their direct or indirect distributors or agents prior to the Closing Date), whether in respect of any express or implied representation or warranty or otherwise; and

(v) all Liabilities arising out of any acts or omissions of Buyer or its Subsidiaries in connection with its or their performance under Contracts as contemplated by Section 4.4(c)(i).

(b) *Seller's Indemnification Obligations*. On and after the Closing Date, Seller hereby agrees to indemnify, defend and hold harmless Buyer and each of its, directors, officers, employees and Subsidiaries (collectively, the "*Buyer Indemnified Parties*"), from and against, and will pay to the Buyer Indemnified Parties the amount of, any and all Damages imposed on, sustained, incurred or suffered by or asserted against them in respect of, but only in respect of:

(i) any breach of Seller's representations and warranties in this Agreement; *provided*, that subject to Section 8.5, any indemnification claim under this Section 8.1(b)(i) must be made within the period of survivability set forth in Section 3.3;

(ii) Seller's failure to perform or otherwise fulfill any of its agreements, covenants, obligations or undertakings hereunder;

(iii) the Excluded Liabilities;

(iv) any claim relating to any property damage, personal injury, death, product recall, product return or other similar Liability arising out of products manufactured or distributed prior to the Closing Date (other than to the extent arising out of or resulting from the shipment, storage, handling or labeling (or any acts or omissions in respect thereof) of such products by Buyer, any of its Affiliates or any of their direct or indirect distributors or agents after the Closing Date), whether in respect of any express or implied representation or warranty or otherwise;

(v) any claims arising out of or relating to Environmental Laws with respect to the operation of the Business by Seller or its Subsidiaries and their predecessors-in-interest prior to the Closing; and

(vi) any liability with respect to an employee of the Business who is not a Scheduled Employee arising under non-U.S. Law as a consequence of the transactions contemplated hereby.

8.2. *Procedure*. If any of the persons to be indemnified under this Article VIII has suffered or incurred any Damages with respect to which indemnification is to be sought hereunder, the indemnified party shall so notify the party from whom indemnification is sought promptly in writing describing such Damages, the amount or estimated amount thereof, if known or reasonably capable of estimation, and the method of computation of such Damages. If a claim or demand by a third party is made against an indemnified party or any action at Law or suit in equity is instituted against an indemnified party by a third party (each claim, demand, action or suit by a third party, a "*Third Party Claim*"), and if an indemnified party intends to seek indemnity with respect thereto under this Article VIII, such indemnified party shall notify the indemnifying party in writing of such Third Party Claim within ten (10) business days of receipt of such Third Party Claim, setting forth such Third Party Claim in reasonable detail and tender to the indemnifying party the defense of such Third Party Claim; *provided*, that failure to give such notification shall not affect the indemnification provided hereunder, except to the extent the indemnifying party shall have been actually prejudiced as a result of such failure. The indemnifying party shall have the right but not the obligation to undertake the conduct and control, through counsel of its own choosing and at its own expense, of the settlement or defense of any Third Party Claim, and the indemnified party shall cooperate with the indemnifying party in connection therewith; *provided*, that if the indemnifying party elects to undertake the conduct and control of such settlement or defense, then the indemnified party may participate in such settlement or defense through counsel chosen by such indemnified party and acceptable to the indemnifying party, *provided*, that the fees and expenses of such counsel shall be borne by such indemnified party. So long as the indemnifying party is reasonably contesting any such claim in good faith, the indemnified party shall not pay or settle any such Third Party Claim. Notwithstanding the foregoing, the indemnified party shall have the right to pay or settle any such Third Party Claim; *provided*, that in such event it shall waive any right to indemnity therefor by the indemnifying party. The indemnifying party shall not, except with the consent of the indemnified party, enter into any settlement or consent to entry of any judgment unless: (i) such settlement or judgment includes as an unconditional term thereof the giving by the person or persons asserting such claim to all indemnified parties (*i.e.*, Seller Indemnified Party or Buyer Indemnified Party, as the case may be) an unconditional release from all Liability with respect to such claim and (ii) the relief provided in connection with such settlement or judgment effected by the indemnifying party is satisfied entirely by the indemnifying party. The indemnified party shall cooperate in the defense of all such claims.

8.3. *Limitations on Indemnification*.

(a) *Indemnification Threshold*. Seller shall be required to indemnify, defend and hold harmless the Buyer Indemnified Parties under Section 8.1(b)(i) with respect to Damages incurred by such indemnified party in accordance with Section 8.1(b)(i) only to the extent that the aggregate amount of all such Damages of the Buyer Indemnified Parties exceeds $1,500,000 (the "*Deductible*"), in which event only the amount in excess of $1,500,000 shall be indemnified; *provided*, that the Deductible shall not apply to Damages resulting from any breach of the representation set forth in the first sentence of Section 3.1(p); *provided*, *further*, that any such Damages shall not be taken into account for purposes of determining whether the Deductible has been met in respect of any other breach of a representation or warranty.

(b) *Limitation on Liability*. In no event shall the aggregate Liability of Seller under this Article VIII exceed 40% of the Purchase Price, as such price may be adjusted in accordance with the terms hereof.

(c) *Certain Damages not Indemnifiable*. In no event shall Seller or Buyer, as the case may be, be liable to Buyer Indemnified Parties or Seller Indemnified Parties, respectively, for (i) loss of profits which are not (A) reasonably foreseeable and (B) directly attributable to the act, omission or circumstance giving rise to the applicable claim for indemnification, (ii) damage to reputation or (iii) special, indirect, incidental or consequential damages.

(d) *Indemnity Payments Reduced by Insurance Proceeds and Tax Benefits*.

(i) Any indemnity payment payable pursuant to this Agreement shall be decreased to the extent of any insurance proceeds received by the Buyer Indemnified Party or the Seller Indemnified Party, as the case may be, in respect of the Damages giving rise to such indemnity payment. In the event Buyer Indemnified Parties or Seller Indemnified Parties seek indemnification for Damages pursuant to this Article VIII, the party seeking indemnification shall use its reasonable best efforts to recover in respect of the applicable Damages under all applicable third-party insurance policies held by such party. The party seeking indemnification shall not, except with the consent of the indemnifying party (which consent shall not be unreasonably withheld), enter into any settlement with any insurance provider with respect to any such claims. In the event the party seeking indemnification receives insurance proceeds for claims with respect to Damages for which the indemnifying party has previously indemnified the indemnified party, the party securing indemnification will promptly pay such proceeds to the indemnifying party up to the amount previously paid by the indemnifying party as indemnification with respect to such Damages.

(ii) Notwithstanding anything to the contrary in this Article VIII, any indemnity payment otherwise due and payable under this Agreement shall be decreased (but not below zero) to the extent of any actual reduction in Taxes payable by the indemnified party or any of its Subsidiaries as a result of its receipt of any such indemnity payment or as a result of or in connection with the loss giving rise to the claim for indemnification, determined at an assumed marginal tax rate equal to the highest marginal tax rate then in effect for corporate taxpayers in the relevant jurisdiction.

(e) *Mitigation*. Buyer and Seller shall cooperate with each other with respect to resolving any claim or Liability with respect to which one party is obligated to indemnify the other party hereunder, including by using its reasonable best efforts to mitigate or resolve any such claim or Liability. In the event that Buyer or Seller shall fail to so cooperate and make such efforts to mitigate or resolve any such claim or Liability, then notwithstanding anything else to the contrary contained herein, the other party shall not be required to indemnify any person for any Damages that could reasonably be expected to have been avoided if Buyer or Seller, as the case may be, had made such efforts.

(f) *Subrogation*. The indemnifying party shall be subrogated to any right of action which the indemnified party may have against any other person with respect to any matters giving rise to a claim for indemnification hereunder.

(g) *Final Statement of Assets and Liabilities*. Buyer shall not be entitled to indemnification under this Article VIII with respect to any Liability that is reflected as a Liability on the Final Statement of Assets and Liabilities and taken into account in determination of the adjustment to the Purchase Price under Section 1.3.

8.4. *Exclusive Remedy*. Each of Seller and Buyer acknowledges and agrees that, from and after the Closing (except as provided in Section 9.9 hereof), its sole and exclusive remedy with respect to any and all claims against the other party relating to the subject matter of this Agreement (other than the Ancillary Agreements) shall be pursuant to the indemnification provisions set forth in this Article VIII or as otherwise provided hereunder; *provided*, *however*, that there shall be no limitation on the right to obtain injunctive or other equitable relief under appropriate circumstances. In furtherance of the foregoing, each of Seller and Buyer hereby waives and shall cause their respective Subsidiaries to waive, from and after the Closing, to the fullest extent permitted under applicable Law, any and all rights, claims and causes of action (other than claims of, or causes of action arising from fraud) it may have against the other party relating to the subject matter of this Agreement arising under or based upon any Law or otherwise; *provided*, *however*, that there shall be no limitation on the right to obtain injunctive or other equitable relief under appropriate circumstances.

8.5. *Time Period*.

(a) Except for claims related to Taxes, if, at any time prior to the expiration date of the representations and warranties pursuant to Section 3.3 (the "*Expiration Date*"), any Seller Indemnified Party (acting in good faith) delivers to Buyer a written notice asserting a claim for recovery under Section 8.1(a)(i) (and setting forth in reasonable detail the basis for such Seller Indemnified Party's claim), then the claim asserted in such notice shall survive the Expiration Date until such time as such claim is fully and finally resolved. Except for claims related to Taxes, if, at any time prior to the applicable Expiration Date, any Buyer Indemnified Party (acting in good faith) delivers to Seller a written notice asserting a claim for recovery under Section 8.1(b)(i) (and setting forth in reasonable detail the basis for such Buyer Indemnified Party's claim), then the claim asserted in such notice shall survive the Expiration Date until such time as such claim is fully and finally resolved.

(b) Subject to Section 3.3, any claim for indemnity related to Taxes by Buyer or Seller may be made at any time prior to the expiration of the applicable Tax statute of limitations with respect to the relevant taxable period (including all periods of extension).

8.6. *Adjustments to Purchase Price*. Amounts paid pursuant to this Article VIII shall be considered adjustments to the Purchase Price (including for tax purposes, unless otherwise required by applicable Law).

ARTICLE IX

MISCELLANEOUS

9.1. *Termination and Abandonment*.

(a) *General*. This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing:

(i) by mutual written consent of Buyer and Seller;

(ii) by Seller if any of the applicable conditions set forth in Section 5.1 or 5.3 shall have become incapable of fulfillment, and shall not have been waived by Seller;

(iii) by Buyer if any of the applicable conditions set forth in Section 5.1 or 5.2 shall have become incapable of fulfillment, and shall not have been waived by Buyer;

(iv) by Buyer on or after the 181st day after the date hereof if, through no failure of Buyer to satisfy any of its obligations under this Agreement, the Closing shall not have occurred; *provided*, that if the Closing shall not have occurred solely as a result of any condition set forth in Section 5.1(b) not having been satisfied, Seller may, upon notice to Buyer on or prior to such 181st day, extend the date upon or after which Buyer may terminate this Agreement under this Section 9.1(a)(iv) to the 271st day after the date hereof; or

(v) by Seller on or after the 181st day after the date hereof if, through no failure of Seller to satisfy any of its obligations under this Agreement, the Closing shall not have occurred; *provided*, that if the Closing shall not have occurred solely as a result of any condition set forth in Section 5.1(b) not having been satisfied, Buyer may, upon notice to Seller on or prior to such 181st day, extend the date upon or after which Seller may terminate this Agreement under this Section 9.1(a)(v) to the 271st day after the date hereof.

(b) *Procedure Upon Termination*. In the event of the termination and abandonment of this Agreement, written notice thereof shall promptly be given to the other party hereto and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned without further action by any of the parties hereto.

(c) *Survival of Certain Provisions*. In the event this Agreement is terminated in accordance with Section 9.1(a), no party shall have any Liability hereunder to the other party hereto or their respective directors, officers, employees, Subsidiaries or other Affiliates or representatives except for the obligations of the parties with respect to (A) termination and its effects in this Section 9.1, (B) expenses in Sections 4.3 and 9.2, (C) notices in Section 9.3, (D) public disclosure in Section 9.8 and (G) governing law and submission to jurisdiction in Sections 9.13 and 9.14; *provided*, that nothing herein will relieve any party from liability for any breach of any covenant set forth in this Agreement prior to such termination. Except as specifically provided otherwise in this Agreement, the provisions of this Agreement shall survive the Closing.

9.2. *Fees and Expenses*. Subject to Section 4.3, whether or not the transactions contemplated hereby are consummated, except as provided herein each of the parties hereto shall pay its own fees and expenses incident to the negotiation, preparation and execution of this Agreement, including, without limitation, attorneys', accountants', brokers' and other advisors' fees.

9.3. *Notices*. All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or by overnight courier with delivery charges prepaid, or sent by facsimile, as follows:

(a) if to Seller, to it at:

C. R. Bard, Inc.
730 Central Avenue
Murray Hill, New Jersey 07974
Attention: General Counsel
Fax No.: (908) 277-8025

with a copy to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
Attention: Alan D. Schnitzer, Esq.
Fax No.: (212) 455-2502

(b) if to Buyer, to it at:

ConMed Corporation
Attention: President
525 French Road
Utica, New York 13502
Fax No.: (315) 732-5267

with a copy to:

ConMed Corporation
Attention: General Counsel
525 French Road
Utica, New York 13502
Fax No.: (315) 793-8929

or to such other person or address as either party shall specify by notice in writing to the other party. All such notices, requests, demands, waivers and communications shall be deemed to have been received on the date of delivery.

9.4. *Entire Agreement*. This Agreement, the Supply Side Letter between the parties hereto dated the date hereof (the "*Supply Side Letter*") and the Ancillary Agreements (including the Exhibits and Schedules hereto and thereto) constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, oral and written (other than the Confidentiality Agreement, dated April 18, 2004, between UBS Securities LLC, as agent for Seller, and Buyer). In furtherance of the foregoing, other than the rights explicitly licensed in Sections 4.8, 4.9 and 4.10, no right, license or other interest in or to any other patent(s), intellectual property, know-how, technology or trade secrets, whether expressly or by estoppel, implication, exhaustion, other doctrine of law, equity or otherwise, is granted by this Agreement. All rights not expressly granted in Sections 4.8, 4.9 or 4.10 with respect to the subject matter thereof are reserved by the owner thereof. Buyer further acknowledges and agrees that, other than the representations and warranties of Seller specifically contained in this Agreement, the Supply Side Letter and the Ancillary Agreements, there are no representations or warranties of Seller or any other person affiliated with Seller either expressed or implied with respect to the Business, the Assets or the Assumed Liabilities. To the extent there are any inconsistencies between the terms of this Agreement and the Partial Asset Sale Agreement, the terms of this Agreement shall prevail.

9.5. *Binding Effect; Benefit*. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns. Except as expressly provided in Articles VI and VIII with respect to indemnification, nothing in this Agreement, express or implied, is intended to confer on any person, other than the parties hereto or their respective permitted successors and assigns, any rights, remedies, obligations or Liabilities under or by reason of this Agreement.

9.6. *Assignability*. This Agreement shall not be assigned by operation of Law or otherwise by either of the parties hereto without the prior written consent of the other party; *provided*, *however*, that Seller and Buyer may transfer the license granted to it pursuant to Section 4.8, 4.9 or 4.10, as applicable, in accordance with the terms thereof. Buyer shall have the right to assign any or all of its rights to acquire the Assets and to delegate any or all of its obligations to assume the Assumed Liabilities to one or more of its respective direct or indirect wholly-owned Subsidiaries (each a "*Designee*"); *provided*, *however*, that Buyer hereby guarantees to Seller the performance of the Designees, including under any Ancillary Agreement.

9.7. *Amendment and Modification; Waiver*. Except as provided in Sections 9.15 and 9.16 and subject to applicable Law, this Agreement and any Exhibit or Schedule attached hereto may be amended, modified and supplemented by a written instrument expressly identified as an amendment hereto authorized and executed on behalf of Buyer and Seller with respect to any of the terms contained herein. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and executed by the party so waiving. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other or subsequent breach. No failure on the part of either party hereto to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof. Except as set forth in Section 8.4 hereof, the remedies herein are cumulative and not exclusive of any remedies provided by Law.

9.8. *Public Announcements*. Unless otherwise required by Law, regulation or legal or judicial process or the rules of any stock exchange, prior to the Closing Date, no news release or other public announcement pertaining to the transactions contemplated by this Agreement will be made by or on behalf of either party without the prior approval of the other party, which approval shall not be unreasonably withheld. If in the judgment of either party, upon advice of its counsel, such a news release or public announcement is required by Law, regulation or legal or judicial process or the rules of any stock exchange, the party intending to make such release or announcement shall provide prior notice to the other party of the contents of such release or announcement and shall consult with the other party with respect thereto.

9.9. *Specific Performance*. Buyer and Seller each acknowledge that, in view of the uniqueness of the transactions contemplated by this Agreement, the other party might not have an adequate remedy at Law for money damages if this Agreement has not been performed in accordance with its terms. Each party therefore agrees that the other party shall be entitled to such specific enforcement of the terms hereof in addition to any other remedy to which it may be entitled, at Law or in equity.

9.10. *Bulk Sales Law*. The parties hereto each agree to waive compliance by the other with the provisions of the Bulk Sales Law of any jurisdiction, except France.

9.11. *Section Headings*. The section headings contained in this Agreement are inserted for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

9.12. *Counterparts*. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument.

9.13. *Applicable Law*. This Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the Laws of the State of New York.

9.14. *Submission to Jurisdiction*. The parties hereby irrevocably and unconditionally consent to submit to the exclusive jurisdiction of the courts of the State of New York located in the County of New York or the United States District Court for the Southern District of New York and the appellate courts having jurisdiction of appeals in such courts for any actions, suits or proceedings arising out of or relating to any Transaction Agreement or the transactions contemplated hereby or thereby (and the parties agree not to commence any action, suit or proceeding relating thereto except in such courts), and further agree that service of any process, summons, notice or document by U.S. registered mail shall be effective service of process for any action, suit or proceeding brought against the parties in any such court. The parties hereby irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of any Transaction Agreement or the transactions contemplated hereby or thereby, in such New York State court or, to the extent permitted by Law, in such federal court, and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. The parties hereby irrevocably and unconditionally waive all right to trial by jury in any action, suit or proceeding (whether based on contract, tort or otherwise) arising out of any Transaction Agreement or the transactions contemplated hereby or thereby.

9.15. *Severability of Provisions*. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent and only for the duration of such prohibition or enforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction. If any such provision shall be adjudged by any court or authority of competent jurisdiction to be prohibited or unenforceable but would be valid and enforceable if part of the wording thereof were to be deleted and/or the period thereof were to be reduced and/or the area thereby were to be reduced, such provision shall apply within the jurisdiction of such court or authority with such modifications as are necessary to make it valid and enforceable.

9.16. *Schedules*. Any fact or item which is clearly disclosed on any schedule to this Agreement in such a way as to make its relevance to a representation or representations made elsewhere in this Agreement or to the information called for by another schedule or other schedules to this Agreement readily apparent shall be deemed to be an exception to such representation or representations or to be disclosed on such other schedule or schedules, as the case may be, notwithstanding the omission of a reference or cross-reference thereto. Any fact or item disclosed on any Schedule hereto shall not by reason only of such inclusion be deemed to be material and shall not be employed as a point of reference in determining any standard of materiality under this Agreement. If (i) Seller delivers to Buyer an amendment or supplement to any Schedule hereto prior to the Closing Date and (ii) Seller confirms to Buyer that the information set forth in such amendment or supplement is such that the condition set forth in Section 5.2(a) would not be satisfied in the absence of such amendment or supplement, then Buyer, notwithstanding any other provision, will not be obligated to consummate the transactions contemplated by this Agreement, *provided*, *however* that if the Closing takes place, such amendment or supplement will be given effect for the purpose of determining the provision regarding accuracy of Seller's representations and warranties in Section 5.2(a), Seller's liability to Buyer under Section 8.1(b)(i) and this Section.

9.17. *Certain Defined Terms*.

For purposes of this Agreement, the following terms have the following meanings when used, in addition to the terms defined elsewhere herein:

(i) "*Affiliate*" of a person means another person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, the first mentioned person;

(ii) "*Ancillary Agreements*" means, collectively, the Transition and Supply Agreement, the Partial Asset Sale Agreement, the Sublease Agreement and the License and Supply Agreements;

(iii) "*Antitrust Division*" shall have the meaning set forth in Section 4.3;

(iv) "*Antitrust Improvements Act*" shall have the meaning set forth in Section 4.3;

(v) "*Assets*" shall have the meaning set forth in Section 1.1(a);

(vi) "*Assumed Liabilities*" shall have the meaning set forth in Section 1.1(c);

(vii) "*Auditor*" shall have the meaning set forth in Section 1.3(c);

(viii) "*Benefit Plans*" shall have the meaning set forth in Section 3.1(n)(i);

(ix) "*Bonus Plans*" shall have the meaning set forth in Section 7.4;

(x) "*Business*" shall have the meaning set forth in the Preamble;

(xi) "*Buyer*" shall have the meaning set forth in the Preamble;

(xii) "*Buyer Indemnified Parties*" shall have the meaning set forth in Section 8.1(b);

(xiii) "*Buyer's Objection*" shall have the meaning set forth in Section 1.3(b);

(xiv) "*Closing*" shall have the meaning set forth in Section 2.1;

(xv) "*Closing Date*" shall have the meaning set forth in Section 2.1;

(xvi) "*Code*" shall have the meaning set forth in Section 3.1(n)(iii);

(xvii) "*Commencement Date*" shall have the meaning set forth in Section 7.2(a);

(xviii) "*Competitive Activities*" shall have the meaning set forth in Section 4.5;

(xix) "*Competitive Development Activities*" shall have the meaning set forth in Section 4.5;

(xx) "*Competitive Sales Activities*" shall have the meaning set forth in Section 4.5;

(xxi) "*Contract*" means any contract, agreement, license, purchase order or purchase commitment;

(xxii) "*Damages*" shall have the meaning set forth in Section 8.1(a);

(xxiii) "*Deductible*" shall have the meaning set forth in Section 8.3(a);

(xxiv) "*Delayed Employment Date*" shall have the meaning set forth in Section 7.1(b)(i);

(xxv) "*Designee*" shall have the meaning set forth in Section 9.6;

(xxvi) "*Directives*" shall have the meaning set forth in Section 7.7(a)(ii);

(xxvii) "*Disabled Employee*" shall have the meaning set forth in Section 7.1(b)(i);

(xxviii) "*Endoscopic Gastrointestinal Products*" means the following devices, including such devices currently in development, delivered in conjunction with a flexible endoscope for the diagnosis or treatment of gastrointestinal disease: (1) biliary guidewires, (2) stone removal balloons, (3) biopsy forceps, (4) ERCP cannulas, (5) biliary balloon dilators, (6) plastic biliary stents, (7) esophageal and pyloric/colonic dilitation balloons (including the related balloon inflation devices), (8) reusable polyvinyl dilators, (9) ligation devices, (10) sclerotherapy injection needles, (11) bipolar probes, (12) biliary papillotomes, (13) polypectomy snares, (14) endoscope cleaning brushes, (15) disposable bite blocks, (16) cytology brushes and (17) biopsy channel accessory introducers;

(xxix) "*ERISA*" shall have the meaning set forth in Section 3.1(n)(i);

(xxx) "*Environmental Law*" shall have the meaning set forth in Section 3.1(q);

(xxxi) "*Excluded Assets*" shall have the meaning set forth in Section 1.1(b);

(xxxii) "*Excluded Liabilities*" shall have the meaning set forth in Section 1.1(d);

(xxxiii) "*Expiration Date*" shall have the meaning set forth in Section 8.5(a);

(xxxiv) "*Eye-wire Field of Use*" shall have the meaning set forth in Section 4.9;

(xxxv) "*FDA*" means the U.S. Food and Drug Administration;

(xxxvi) "*Final Statement of Assets and Liabilities*" shall have the meaning set forth in Section 1.3(d);

(xxxvii) "*French Assets*" shall have the meaning set forth in Section 1.2(b);

(xxxviii) "*French Business*" shall have the meaning set forth in Section 1.2(b);

(xxxix) "*French Closing*" shall have the meaning set forth in Section 2.1;

(xl) "*French Closing Date*" means the actual date of the French Closing;

(xli) "*French Employees*" shall have the meaning set forth in Section 7.1(a);

(xlii) "*French Purchase Price*" shall have the meaning set forth in Section 1.2(b);

(xliii) "*FTC*" shall have the meaning set forth in Section 4.3;

(xliv) "*Full Bonus*" shall have the meaning set forth in Section 7.4;

(xlv) "*GAAP*" means U.S. generally accepted accounting principles;

(xlvi) "*Glens Falls Delayed Employment Date*" shall have the meaning set forth in Section 7.1(b)(ii);

(xlvii) "*Glens Falls Disabled Employee*" shall have the meaning set forth in Section 7.1(b)(ii);

(xlviii) "*Glens Falls Employees*" shall have the meaning set forth in Section 7.1(a);

(xlix) "*Glens Falls Inactive Employee*" shall have the meaning set forth in Section 7.1(b)(ii);

(l) "*Glens Falls Military Leave Employee*" shall have the meaning set forth in Section 7.1(b)(ii);

(li) "*Glens Falls Offer Extension Date*" shall have the meaning set forth in Section 7.1(b)(ii);

(lii) "*Governmental Authority*" means any federal, state, provincial, local, county or municipal government, governmental, regulatory or administrative agency, department, court, commission, board, bureau or other authority or instrumentality, domestic or foreign;

(liii) "*Hazardous Substance*" shall have the meaning set forth in Section 3.1(q);

(liv) "*Inactive Employee*" shall have the meaning set forth in Section 7.1(b)(i);

(lv) "*Initial Statement of Assets and Liabilities*" shall have the meaning set forth in Section 1.3(a);

(lvi) "*Intellectual Property*" means U.S. and foreign intellectual property rights, including without limitation patents, inventions, technology, know-how, copyrights and copyrightable works, trademarks, service marks, trade names, domain names, logos, trade dress and trade secrets;

(lvii) "*Knowledge*" with respect to Seller and its Subsidiaries means the actual knowledge of Mark Downey, Mark Lederer, Patrick McGloin and the Chief Financial Officer, General Counsel or any attorney within the Seller's law department, Vice President of Global Operations and Vice President of Regulatory Sciences of the Seller, and the term "*Knowledge*" with respect to Buyer shall mean the actual knowledge of the President, Chief Financial Officer, Senior Vice President and General Counsel of the Buyer;

(lviii) "*Law*" shall have the meaning set forth in Section 3.1(c);

(lix) "*Legal Proceeding*" shall have the meaning set forth in Section 3.1(i);

(lx) "*Liabilities*" means any and all debts, liabilities and obligations of any nature, whether accrued or fixed, known or unknown, absolute or contingent, matured or unmatured or determined or determinable and whether or not required to be disclosed on a balance sheet prepared in accordance with GAAP;

(lxi) "*License and Supply Agreements*" means the License and Supply Agreements in the form of Exhibits C and D and the Supply Agreement in the form of Exhibit E;

(lxii) "*Licensed Field of Use*" shall have the meaning set forth in Section 4.10;

(lxiii) "*Licensed Products*" shall have the meaning set forth in Section 4.10;

(lxiv) "*Liens*" shall have the meaning set forth in Section 3.1(g);

(lxv) "*Material Adverse Effect*" means an effect that is materially adverse to the business, assets or results of operations of the Business taken as a whole (after taking into account any insurance recoveries available in respect thereof); provided, however, that any such effect attributable to or resulting from (i) any prospective changes in general economic conditions not affecting the United States; national conditions and any applicable governmental regimes (including general political instability and changes in political climate); (ii) the execution of this Agreement, the announcement or public disclosure thereof, the transactions contemplated hereby and the identity or involvement by Buyer, (iii) personnel changes resulting from the transactions contemplated hereby or (iv) any action or omission required to be taken or omitted to be taken by the Seller or any of its Subsidiaries pursuant to this Agreement or which is otherwise taken or omitted to be taken with the prior written consent of Buyer shall, in each case, be deemed not to constitute or give rise to a "*Material Adverse Effect*";

(lxvi) "*Material Contract*" shall have the meaning set forth in Section 3.1(h);

(lxvii) "*Material Permits*" shall have the meaning set forth in Section 3.1(j);

(lxviii) "*Military Leave Employee*" shall have the meaning set forth in Section 7.1(b)(i);

(lxix) "*Non-United States Employees*" means, collectively, the French Employees and the UK Employees;

(lxx) "*Non-United States Transferred Employees*" shall have the meaning set forth in Section 7.1(c);

(lxxi) "*Offer Extension Date*" shall have the meaning set forth in Section 7.1(b)(i);

(lxxii) "*Offered Assets*" shall have the meaning set forth in Section 4.5;

(lxxiii) "*Partial Asset Sale Agreement*" means the Acte de Cession Partielle de Fonds de Commerce substantially in the form of Exhibit F;

(lxxiv) "*Permits*" shall have the meaning set forth in Section 1.1(a)(vi);

(lxxv) "*person*" means an individual, corporation, partnership, association, trust, incorporated organization, Governmental Authority, other entity or group (as defined in Section 13(d)(3) of the Securities Exchange Act of 1934, as amended);

(lxxvi) "*Preliminary Closing Statement of Assets and Liabilities*" shall have the meaning set forth in Section 1.3(a);

(lxxvii) "*Products*" shall mean the Pulmonary Bronchoscopy Products and the Endoscopic Gastrointestinal Products;

(lxxviii) "*Pulmonary Bronchoscopy Products*" means the following diagnostic pulmonary bronchoscopy devices, including such devices currently in development: (1) diagnostic pulmonary bronchoscopy biopsy needles, including, without limitation, transbracheal aspiration needles, cytology needles, histology needles, pleural tapping needles, percutaneous lung biopsy needles and thoracentesis needles and kits, (2) diagnostic pulmonary bronchoscopy biopsy forceps, (3) cytology brushes and (4) bronchoscope cleaning brushes;

(lxxix) "*Purchase Price*" shall have the meaning set forth in Section 1.2;

(lxxx) "*Release*" shall have the meaning set forth in Section 3.1(q);

(lxxxi) "*Relocation Date*" shall have the meaning set forth in Section 7.1(b)(ii);

(lxxxii) "*Scheduled Employees*" shall have the meaning set forth in Section 7.1(a);

(lxxxiii) "*Seller*" shall have the meaning defined as set forth in the Preamble;

(lxxxiv) "*Seller Indemnified Parties*" shall have the meaning set forth in Section 8.1(a);

(lxxxv) "*Seller's Defined Benefit Plan*" shall have the meaning set forth in Section 7.6(b);

(lxxxvi) "*Seller's PTO Policy*" shall have the meaning set forth in Section 7.2(a);

(lxxxvii) "*Seller's Savings Plan*" shall have the meaning set forth in Section 7.6(a);

(lxxxviii) "*Seller Severance Plan*" shall have the meaning set forth in Section 7.1(d);

(lxxxix) "*Seller's Trademarks and Logos*" shall have the meaning set forth in Section 4.6;

(xc) "*Special Net Book Value*" shall have the meaning set forth in Section 1.3(a);

(xci) "*Straddle Period*" shall have the meaning set forth in Section 1.1(c)(vi);

(xcii) "*Sublease Agreement*" means the Sublease Agreement in the form of Exhibit G;

(xciii) "*Subsidiary*" means, with respect to any person, a corporation, partnership, joint venture or other entity of which such person owns, directly or indirectly, more than 50% of the stock or other equity interests the holder of which is generally entitled to vote for the election of the board of directors (or comparable body) of such corporation or other entity;

(xciv) "*Supply Side Letter*" shall have the meaning set forth in Section 9.4;

(xcv) "*Tax Returns*" shall have the meaning set forth in Section 3.1(f)(i);

(xcvi) "*Taxes*" shall have the meaning set forth in Section 3.1(f)(i);

(xcvii) "*Third Party Claim*" shall have the meaning set forth in Section 8.2;

(xcviii) "*Transaction Agreements*" shall have the meaning set forth in Section 3.1(a);

(xcix) "*Transferred Employees*" shall have the meaning set forth in Section 7.1(c);

(c) "*Transferred Intellectual Property*" shall have the meaning set forth in Section 1.1(a)(vii);

(ci) "*Transferred Service*" shall have the meaning set forth in Section 7.2(b);

(cii) "*Transition and Supply Agreement*" means the Transition and Supply Agreement in the form of Exhibit H;

(ciii) "*UK Employee*" shall have the meaning set forth in Section 7.1(a);

(civ) "*U.S. Employee*" shall have the meaning set forth in Section 7.1(a);

(cv) "*U.S. Transferred Employee*" shall have the meaning set forth in Section 7.1(b)(iii);

(cvi) "*USERA*" shall have the meaning set forth in Section 7.1(b)(i);

(cvii) "*VAT*" means value added taxes or similar sales or turnover tax of any relevant jurisdiction; and

(cviii) "*WARN*" shall have the meaning set forth in Section 7.7.

[The remainder of this page has been intentionally left blank.
The following page is numbered S-1.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

C. R. Bard, Inc.

BY: _____

Name:
Title:

ConMed Corporation

BY: _____

Name:
Title:

Exhibit 2.2

FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT

This First Amendment to Asset Purchase Agreement (the "First Amendment") is made as of this 29th day of September 2004 between ConMed Corporation, a New York corporation, and C. R. Bard, Inc., a New Jersey corporation. Capitalized terms used in this First Amendment that are not otherwise defined herein shall have the meanings ascribed to them in the Agreement, as defined below:

RECITALS

WHEREAS, the parties hereto have executed that certain Asset Purchase Agreement dated as of August 18, 2004 (the "Agreement"); and

WHEREAS, pursuant to Section 9.7 of the Agreement, the parties to the Agreement desire to amend the Agreement.

NOW THEREFORE, the parties hereto, in consideration of the premises and of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

FIRST. The Parties agree that Section 1.1(a)(vi) is hereby amended and restated to read in its entirety as follows:

"(vi) to the extent transferable, all licenses, permits, consents, approvals, authorizations, qualifications, orders or franchises issued by any Governmental Authority, including any pending applications or renewals, which relate exclusively to the Business on the Closing Date (or the French Closing Date in the case of the foregoing to the extent that the foregoing is a French Asset) (the "*Permits*");".

SECOND. The parties agree that Schedule 1.1(a)(vii) to the Agreement is hereby deleted in its entirety and replaced with the attached Schedule 1.1(a)(vii).

THIRD. The parties agree that Section 1.2(a) of the Agreement is hereby amended to insert the phrase "less $318,331" immediately after the phrase "(the "Purchase Price")".

FOURTH. The parties agree that Section 1.2(b) of the Agreement is hereby amended by (i) deleting the phrase "in Euros an amount which Buyer and Seller shall agree prior to Closing" from the first sentence of such Section and replacing such phrase with "Euro 258,428" and (ii) deleting in its entirety the second sentence of such Section.

FIFTH. The parties agree that the second sentence of Section 1.3(a) is hereby amended and restated to read in its entirety as follows:

"The Preliminary Closing Statement of Assets and Liabilities, after giving effect to the transactions contemplated by this Agreement, shall be prepared on a basis consistent with, and reflecting the same line items as, the special purpose statement of assets and liabilities of the Business as of June 30, 2004, delivered by Seller to Buyer and attached as Exhibit A hereto (the "*Initial Statement of Assets and Liabilities*"), subject to the exceptions and such other matters as are set forth in *Schedule 1.3(a)* hereto, and shall disclose the book value, as of the Closing Date, of inventory less (i) accounts payable, (ii) accrued expenses and (iii) $400,000, without further adjustment (the "*Special Net Book Value*")."

SIXTH. The parties agree that Section 1.3(e) of the Agreement is hereby amended by adding to the end of such section the following sentence: "In the event that any adjustment of the Purchase Price pursuant to this Section 1.3 relates to a change in book value of the French Business, the parties shall negotiate in good faith such adjustments to the payment mechanics set forth in this Section 1.3(e) as are required by French Law and/or as are necessary or appropriate to preserve to the maximum extent possible the intent and purposes of this Agreement."

SEVENTH. The parties agree that Schedule 3.1(c) to the Agreement is hereby deleted in its entirety and replaced with the attached Schedule 3.1(c).

EIGHTH. The parties agree that Schedule 3.1(h) to the Agreement is hereby deleted in its entirety and replaced with the attached Schedule 3.1(h).

NINTH. The parties agree that Schedule 3.1(p)(i) to the Agreement is hereby deleted in its entirety and replaced with the attached Schedule 3.1(p)(i).

TENTH. The parties agree that the first sentence of Section 6.2 of the Agreement is hereby amended and restated to read in its entirety as follows:

"The parties will use their best efforts to jointly allocate the Purchase Price (including the Assumed Liabilities) as promptly as practicable and in any event within 25 days of the Closing based upon a valuation analysis to be jointly prepared by the parties; provided, that $22,264,000 of the Purchase Price (subject to adjustment as contemplated by the proviso in the next sentence) shall be allocated to Assets on the books and records of Bard Shannon, Ltd.

ELEVENTH. The parties agree that Schedules 7.1(a)(i) and (ii) to the Agreement are hereby deleted in their entirety and replaced with the attached Schedules 7.1(a)(i) and (ii).

TWELFTH. The parties agree that Section 9.17(lvi) of the Agreement (the definition of "Intellectual Property") is hereby amended and restated to read in its entirety as follows:

"*Intellectual Property*" means U.S. and foreign intellectual property rights, including without limitation patents and patent applications (and any divisions, continuations or reissues arising therefrom), inventions, technology, know-how, copyrights and copyrightable works, trademarks, service marks, trade names, domain names, logos, trade dress and trade secrets. ELEVENTH. Except as expressly provided in this First Amendment, all other terms and provisions of the Agreement shall remain in full force and effect and the parties hereby ratify and confirm the Agreement as amended hereby in all respects.

THIRTEENTH. This First Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the undersigned have executed this First Amendment as of the date first set forth above.

CONMED CORPORATION

By: _____

Name:
Title:

C. R. BARD, INC.

By: _____

Name:
Title:

Exhibit 10.1

SECOND AMENDMENT

SECOND AMENDMENT, dated as of September 23, 2004 (this "*Second Amendment*"), to the Amended and Restated Credit Agreement, dated as of June 30, 2003 (as the same may be further amended, supplemented or otherwise modified from time to time, the "*Credit Agreement*"), among CONMED Corporation, a New York corporation, the several banks and other financial institutions or entities from time to time party thereto (the "*Lenders*"), and JPMorgan Chase Bank, as administrative agent (in such capacity, the "*Administrative Agent*").

W I T N E S S E T H:

WHEREAS, the Borrower, the Lenders and the Administrative Agent are parties to the Credit Agreement;

WHEREAS, The Borrower has requested that the Credit Agreement be amended, among other things, (i) to provide for the Bard Endoscopic Acquisition (as defined herein) and (ii) to effect certain other related amendments to the Credit Agreement;

WHEREAS, the Lenders and the Administrative Agent are willing to agree to such amendment to the Credit Agreement, subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the Borrower, the Lenders and the Administrative Agent hereby agree as follows:

SECTION 1. *Defined Terms*. Unless otherwise defined herein, capitalized terms which are defined in the Credit Agreement are used herein as therein defined.

SECTION 2. *Amendments to Section 1.1 (Definitions)*. (a) Section 1.1 of the Credit Agreement is hereby amended by adding the following new definitions, to appear in alphabetical order:

"*Bard Endoscopic Acquistion*": the acquisition of the endoscopic technology product line of C.R. Bard, Inc., a New Jersey corporation, and related assets for aggregate consideration not to exceed $90,000,000.

"*Cash Settlement*": cash payments in an aggregate amount not to exceed $150,000,000 due and payable to the holders of the Convertible Subordinated Notes upon occurrence of Conversions in accordance with the terms of the Convertible Notes Indenture.

"*Consolidated Total Tangible Assets*" means as of any date of determination thereof, the aggregate consolidated net book value of the assets of the Borrower and its Subsidiaries (other than patents, patent rights, trademarks, trade names, franchises, copyrights, licenses, permits, goodwill and other similar intangible assets properly classified as such in accordance with GAAP) after all appropriate adjustments in accordance with GAAP (including, without limitation, reserves for doubtful receivables, obsolescence, depreciation and amortization).

"*Conversion*": any conversion of the Convertible Subordinated Notes, in accordance with the terms of the Convertible Notes Indenture, into cash and, if applicable, shares of common stock of the Borrower.

"*Convertible Notes Indenture*": the indenture governing the Convertible Subordinated Notes.

"*Convertible Subordinated Notes*": a single issuance of unsecured Indebtedness of the Borrower in an aggregate principal amount not to exceed $150,000,000 which (i) under certain circumstances are convertible at the option of any holder into an amount of cash not to exceed $150,000,000 in the aggregate and, if applicable, shares of common stock of the Borrower, (ii) other than as set forth in the foregoing clause (i), qualifies as Permitted Subordinated Indebtedness and (iii) is on terms and conditions reasonably satisfactory to the Administrative Agent.

(i) The definition of "Available Excess Cash Flow" in Section 1.1 of the Credit Agreement is hereby amended by:

(ii) inserting the number "(i)" in front of the term "Permitted Subordinated Indebtedness" in subclause (z) thereof and

(iii) inserting the phrase "and (ii) the Convertible Subordinated Notes (for the avoidance of doubt, excluding the Cash Settlement)" at the end thereof.

(iv) The definition of "Excess Cash Flow" in Section 1.1 of the Credit Agreement is hereby amended by:

(v) adding the following new subclause (ix):

"and (ix) the aggregate amount paid by the Borrower in respect of the Cash Settlement (other than with the proceeds of Permitted Subordinated Debt or Revolving Credit Loans).";

(vi) by deleting the word "and" at the end of subclause (vii) thereof and inserting, in lieu thereof, a comma; and

(vii) by deleting the period at the end of subclause (viii) thereof.

(c) The definition of "Permitted Business Acquisition" in Section 1.1 of the Credit Agreement is hereby amended by deleting the word "domestic" therefrom.

SECTION 3. *Amendments to Section 7.1(a) (Financial Condition Covenants—Consolidated Leverage Ratio)*. Section 7.1(a) of the Credit Agreement is hereby amended by deleting from the chart set forth therein the references to each fiscal quarter ending on or after September 30, 2004 and the corresponding Consolidated Leverage Ratio for such fiscal quarters and inserting, in lieu thereof, the following:

"Fiscal Quarter	**Consolidated Leverage Ratio**
September 30, 2004 to September 30, 2005	3.50 to 1.00
December 31, 2005 and thereafter	3.25 to 1.00"

SECTION 4. *Amendment to Section 7.2 (Limitation on Indebtedness)*. Section 7.2 of the Credit Agreement is hereby amended as follows:

(a) by adding the following new subsection (p):

"and (p) the Convertible Subordinated Notes, *provided* that on the date of issuance the Borrower and its Subsidiaries are in compliance with the financial covenant contained in Section 7.1(a), computed on a *pro forma* basis as at the last day of the most recently ended fiscal quarter of the Borrower for which financial statements are available."

(b) by deleting the period from the end of subsection (o) and inserting in lieu thereof a semicolon; and

(c) by deleting the word "and" from the end of existing subsection (n).

SECTION 5. *Amendment to Section 7.5(e) (Limitation on Sales of Assets)*. Section 7.5(e) of the Credit Agreement is hereby amended by deleting subclause (y) thereof and inserting, in lieu thereof, the following new subclause (y):

"(y) the aggregate fair market value of such Property since the Closing Date does not exceed 10.0% of the Consolidated Total Tangible Assets".

SECTION 6. *Amendments to Section 7.6 (Limitation on Dividends)*. Section 7.6 of the Credit Agreement is hereby amended as follows:

(a) by adding the following new subclause (e):

"(e) additional redemptions of Capital Stock using proceeds of the issuance of the Convertible Subordinated Notes in an aggregate amount not to exceed $25,000,000; and";

(b) by adding the following new subclause (f):

"(f) the Cash Settlement.";

(c) by deleting the number "$5,000,000" in existing subsection (d) and inserting in lieu thereof the number "$25,000,000";

(d) by deleting the period from the end of subsection (d) and inserting in lieu thereof a semicolon; and

(e) by deleting the word "and" from the end of existing subsection (c).

SECTION 7. *Amendments to Section 7.8 (Limitation on Investments, Loans and Advances)*. Section 7.8 of the Credit Agreement is hereby amended as follows:

(a) by deleting subclause (y) of subsection (i) and inserting, in lieu thereof, the following new subclause (y):

"(y) the aggregate amount of all investments in such Foreign Subsidiaries (other than investments in accordance with Section 7.8(l)) shall not exceed $50,000,000 since the Closing Date (plus any Available Excess Cash Flow) *minus* the aggregate principal amount of any Indebtedness of any Foreign Subsidiary at any such time outstanding in accordance with Section 7.2(k), *provided* that any such investment that constitutes Indebtedness shall be represented by a note or similar instrument and pledged pursuant to Section 6.9 and the Guarantee and Collateral Agreement;";

(i) by inserting the phrase ", loans or advances" after each occurrence of the word "investments" in Section 7.8(j);

(b) by inserting the following new subsection (l):

"(l) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom, the Borrower and any Subsidiary may make investments in, or create, any Wholly-Owned Foreign Subsidiary (by way of capital contribution or otherwise) for the purpose of making acquisitions in accordance with Section 7.8(k), *provided* that (i) a binding Contractual Obligation with a counterparty other than an Affiliate of the Borrower to make such acquisition is in effect at the time of such investment and (ii) such acquisition is consummated in accordance with Section 7.8(k) within five Business Days of such investment or, if such acquisition is not so consummated, then within eight Business Days of such investment such contribution is reversed; and";

(c) by inserting the following new subsection (m):

"(m) so long as it qualifies as a Permitted Business Acquisition, the Bard Endoscopic Acquisition.";

(d) by deleting the word "and" from the end of subsection (j); and

(i) by deleting the period from the end of subsection (k) and inserting in lieu thereof a semicolon.

SECTION 8. *Amendments to Section 7.9 (Limitation on Optional Payments and Modifications of Debt Instruments)*. Section 7.9 of the Credit Agreement is hereby amended as follows:

(a) inserting the following new subsection (d):

"(d) make or offer to make any payment, prepayment, repurchase or redemption of or otherwise defease or segregate funds with respect to the Convertible Subordinated Notes (other than scheduled interest payments required to be made in cash), other than (i) with Net Cash Proceeds of the sale or issuance of Capital Stock or Permitted Subordinated Indebtedness by the Borrower or any of its Subsidiaries which remain available after application of the required percentage of such Net Cash Proceeds to the prepayment of the Term Loans in accordance with Section 2.12(a)(i), if required thereunder or (ii) if no Default or Event of Default shall have occurred and be continuing or would result therefrom, the payment of the Cash Settlement in connection with any Conversion; or";

(b) inserting the following new subsection (e):

"(e) amend, modify, waive or otherwise change, or consent or agree to any amendment, modification, waiver or other change to the Convertible Subordinated Notes (i) which amends or modifies the subordination provisions contained therein; (ii) which shortens the fixed maturity, or increases the rate or shortens the time of payment of interest on, or increases the amount or shortens the time of payment of any principal or premium payable whether at maturity, at a date fixed for prepayment or by acceleration or otherwise of such Convertible Subordinated Notes, or increases the amount of, or accelerates the time of payment of, any fees payable in connection therewith; (iii) which increases the amount or shortens the time of payment of the Cash Settlement; (iv) which relates to the affirmative or negative covenants, events of default or remedies under the documents or instruments evidencing such Indebtedness and the effect of which is to subject the Borrower or any of its Subsidiaries, to any more onerous or more restrictive provisions; or (v) which otherwise adversely affects the interests of the Lenders as senior creditors or the interests of the Lenders under this Agreement or any other Loan Document in any respect."

(c) by deleting the word "or" from the end of subsection (b); and

(d) by deleting the period from the end of subsection (c) and inserting, in lieu thereof, a semicolon.

SECTION 9. *Representations and Warranties*. (a) The Borrower hereby confirms, reaffirms and restates the representations and warranties set forth in Section 5 of the Credit Agreement. The Borrower represents and warrants that, after giving effect to this Second Amendment, no Default or Event of Default has occurred and is continuing.

(b) The Borrower hereby represents and warrants that the unaudited consolidated balance sheet of the Borrower as at June 30, 2004, and the related unaudited consolidated statements of income and cash flows for the six-month period ended on such date, present fairly the consolidated financial position of the Borrower as at such date, and the consolidated results of its operations and its consolidated cash flows for the six-month period then ended (subject to normal year-end audit adjustments). All such financial statements, including the related schedules and any notes thereto (except as contemplated by GAAP or in the case of any notes to the financial statements dated as of June 30, 2004), have been prepared in accordance with GAAP applied consistently throughout the periods involved (except as approved by the aforementioned firm of accountants and disclosed therein).

SECTION 10. *Effectiveness*. This Second Amendment shall become effective as of the date set forth above (the "Second Amendment Effective Date") upon the satisfaction of the following conditions precedent:

(a) *Second Amendment*. The Administrative Agent shall have received this Second Amendment executed and delivered by the Administrative Agent, the Borrower and Lenders party to the Credit Agreement constituting the "Required Lenders" thereunder.

(b) *Fees*. The Lenders and the Administrative Agent shall have received all fees required to be paid on or before the Second Amendment Effective Date (including, for the avoidance of doubt, all amendment fees payable to consenting Lenders), and all expenses required to be paid on or before the Second Amendment Effective Date for which invoices have been timely presented, including, without limitation, the reasonable fees and expenses of legal counsel, on or before the Second Amendment Effective Date.

(c) *Security Documents*. The Administrative Agent shall have received the Acknowledgment and Confirmation, substantially in the form of Exhibit A hereto, executed and delivered by an authorized officer of the Borrower and each other Loan Party.

(d) *Closing Certificate*. The Administrative Agent shall have received a certificate of each Loan Party, dated the Second Amendment Effective Date, substantially in the form of Exhibit C to the Credit Agreement, with appropriate insertions and attachments.

SECTION 11. *Continuing Effect of the Credit Agreement*. This Second Amendment shall not constitute an amendment of any other provision of the Credit Agreement not expressly referred to herein and shall not be construed as a waiver or consent to any further or future action on the part of the Borrower that would require a waiver or consent of the Lenders or the Administrative Agent. Except as expressly amended hereby, the provisions of the Credit Agreement are and shall remain in full force and effect.

SECTION 12. *Counterparts*. This Second Amendment may be executed by the parties hereto in any number of separate counterparts (including facsimiled counterparts), each of which shall be deemed to be an original, and all of which taken together shall be deemed to constitute one and the same instrument.

SECTION 13. *GOVERNING LAW*. THIS SECOND AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS SECOND AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 14. *Expenses*. The Borrower agrees to pay or reimburse the Administrative Agent for all of its out-of-pocket costs and expenses incurred in connection with the preparation, negotiation and execution of this Second Amendment, including, without limitation, the fees and disbursements of counsel to the Administrative Agent.

[rest of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

CONMED CORPORATION

By: /s/ Robert D. Shallish, Jr.
_____

Name: Robert D. Shallish, Jr.
Title: Vice President

JPMORGAN CHASE BANK, as
Administrative Agent and as a Lender

By: /s/ Frederick K. Miller
_____

Name: Frederick K. Miller
Title: Vice President

AIB DEBT MANAGEMENT, LIMITED

By: /s/ Joseph Augustini

Name: Joseph Augustini
Title: Vice President
Investment Advisor

AIB DEBT MANAGEMENT, LIMITED

By: /s/ Roisin O'Connell

Name: Roisin O'Connell
Title: Assistant Vice President
Investment Advisor

AIM FLOATING RATE FUND
By: INVESCO SENIOR SECURED
MANAGEMENT, INC.
As Sub-Adviser

By: /s/ Thomas H. B. Ewald

Name: Thomas H. B. Ewald
Title: Authorized Signatory

AMMC CDO II, LIMITED
By: AMERICAN MONEY MANAGEMENT CORP.,
as Collateral Manager

By: /s/ David P. Meyer
_____
Name: David P. Meyer
Title: Vice President

APEX (IDM) CDO I, LTD.
BABSON CLO, LTD 2003-I
ELC (CAYMAN) LTD.
ELC (CAYMAN) LTD. CDO SERIES 1999-I
ELC (CAYMAN) LTD. 1999-II
ELC (CAYMAN) LTD. 1999-III
ELC (CAYMAN) LTD. 2000-I
SUFFIELD CLO, LIMITED
TRYON CLO LTD. 2000-I
By: BABSON CAPITAL MANAGEMENT LLC
as Collateral Manager

By: /s/ William A. Hayes
_____

Name: William A. Hayes
Title: Managing Director

ARCHIMEDES FUNDING IV (CAYMAN), LTD.
By: ING CAPITAL ADVISORS LLC,
as Collateral Manager

By: /s/ Michael J. Campbell
_____

Name: Michael J. Campbell
Title: Managing Director

ARES VI CLO LTD.
By: ARES CLO MANAGEMENT VI, L.P.
Investment Manager

By: ARES CLO GP VI, LLC
Its Managing Member

By: /s/ Jeff Moore
_____
Name: Jeff Moore
Title: Vice President

ARES VII CLO LTD.
By: ARES CLO MANAGEMENT VII, L.P.,
Investment Manager

By: ARES CLO GP VII, LLC,
Its General Partner

By: /s/ Jeff Moore
_____
Name: Jeff Moore
Title: Vice President

ARES VIII CLO LTD.
By: ARES CLO MANAGEMENT VIII, L.P.,
Investment Manager

By: ARES CLO GP VIII, LLC,
Its General Partner

By: /s/ Jeff Moore
_____
Name: Jeff Moore
Title: Vice President

AURUM CLO 2002-1 LTD
By: COLUMBIA MANAGEMENT ADVISORS, INC.
As Investment Manager

By: /s/ Colleen Cunniffe
_____
Name: Colleen Cunniffe
Title: Vice President

AVALON CAPITAL LTD.
By: INVESCO SENIOR SECURED
MANAGEMENT, INC.
As Portfolio Advisor

By: /s/ Thomas H.B. Ewald
_____
Name: Thomas H.B. Ewald
Title: Authorized Signatory

AVALON CAPITAL LTD. 2
By: INVESCO SENIOR SECURED
MANAGEMENT, INC.
As Portfolio Advisor

By: /s/ Thomas H.B. Ewald
_____
Name: Thomas H.B. Ewald
Title: Authorized Signatory

BANK LEUMI USA

By: /s/ John Koenigsberg

Name: John Koenigsberg
Title: FVP

By: /s/ Glenn D. Kreutzer

Name: Glenn D. Kreutzer
Title: AT

BANK OF MONTREAL

By: /s/ S. Valia

Name: S. Valia
Title: MD

BIG SKY SENIOR LOAN FUND, LTD.
BY: EATON VANCE MANAGEMENT
AS INVESTMENT ADVISOR

By: /s/ Michael B. Botthof

Name: Michael B. Botthof
Title: Vice President

BILL & MELINDA GATES FOUNDATION
By: BABSON CAPITAL MANAGEMENT LLC
as Investment Adviser

By: /s/ William A. Hayes
_____
Name: William A. Hayes
Title: Managing Director

BRYN MAWR CLO, LTD.
By: DEERFIELD CAPITAL MANAGEMENT, LLC
As its Collateral Manager

By: /s/ Dale Burrow
_____

Name: Dale Burrow
Title: Senior Vice President

CALYON NEW YORK BRANCH

By: /s/ Charles Heidsieck
_____

Name: Charles Heidsieck
Title: Managing Director

CARLYLE HIGH YIELD PARTNERS II, LTD.

By: /s/ Linda Pace

Name: Linda Pace
Title: Managing Director

CARLYLE LOAN OPPORTUNITY FUND

By: /s/ Linda Pace
_____

Name: Linda Pace
Title: Managing Director

CENTURION CDO II, LTD.
By: AMERICAN EXPRESS ASSET
MANAGEMENT GROUP, INC.
as Collateral Manager

By: /s/ Robin C. Stancil
_____

Name: Robin C. Stancil
Title: Supervisor- Fixed Income Support Team

Signature page to
the Second Amendment to the
CONMED Amended and Restated Credit Agreement

CENTURION CDO VI, LTD.
By: AMERICAN EXPRESS ASSET
MANAGEMENT GROUP
as Collateral Manager

By: /s/ Robin C. Stancil
_____
Name: Robin C. Stancil
Title: Supervisor- Fixed Income Support Team

CHARTER VIEW PORTFOLIO
By: INVESCO SENIOR SECURED
MANAGEMENT, INC.
As Investment Advisor

By: /s/ Thomas H.B. Ewald
_____
Name: Thomas H.B. Ewald
Title: Authorized Signatory

Signature page to
the Second Amendment to the
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CITICORP INSURANCE AND INVESTMENT TRUST
By: TRAVELERS ASSET MANAGEMENT
INTERNATIONAL COMPANY, LLC

By: /s/ Matthew McInerny
_____

Name: Matthew McInerny
Title: Investment Officer

CITICORP, USA INC

By: /s/ Allen Fisher

Name: Allen Fisher
Title: Vice President

CITIGROUP INVESTMENTS CORPORATE LOAN FUND INC.
By: TRAVELERS ASSET MANAGEMENT INTERNATIONAL COMPANY LLC

By: /s/ Ronald Carter
_____
Name: Ronald Carter
Title: Vice President

COSTANTINUS EATON VANCE CDO V, LTD.
By: EATON VANCE MANAGEMENT AS
INVESTMENT ADVISOR

By: /s/ Michael B. Botthof
_____

Name: Michael B. Botthof
Title: Vice President

DENALI CAPITAL LLC, managing member of
DC FUNDING PARTNERS, portfolio manager for
DENALI CAPITAL CLO I, LTD., or an affiliate

By: /s/ David Killion
_____

Name: David Killion
Title: Chief Executive Officer

DENALI CAPITAL LLC, managing member of
DC FUNDING PARTNERS, portfolio manager for
DENALI CAPITAL CLO II, LTD., or an affiliate

By: /s/ David Killion
_____

Name: David Killion
Title: Chief Executive Officer

DIVERSIFIED CREDIT PORTFOLIO LTD.
By: INVESCO SENIOR SECURED
MANAGEMENT, INC.
as Investment Adviser

By: /s/ Thomas H.B. Ewald
_____

Name: Thomas H.B. Ewald
Title: Authorized Signatory

DRYDEN IV LEVERAGED LOAN CDO 2003
By: PRUDENTIAL INVESTMENT
MANAGEMENT, INC.,
as Collateral Manager

By: /s/ Ross Smead
_____
Name: Ross Smead
Title: Authorized Signatory

DRYDEN LEVERAGED LOAN CDO 2002-II
By: PRUDENTIAL INVESTMENT
MANAGEMENT, INC.,
as Collateral Manager

By: /s/ Ross Smead
_____
Name: Ross Smead
Title: Authorized Signatory

EATON VANCE CDO III, LTD.
By: EATON VANCE MANAGEMENT
AS INVESTMENT ADVISOR

By: /s/ Michael B. Botthof
_____

Name: Michael B. Botthof
Title: Vice President

EATON VANCE CDO VI LTD.
By: EATON VANCE MANAGEMENT
AS INVESTMENT ADVISOR

By: /s/ Michael B. Botthof
_____

Name: Michael B. Botthof
Title: Vice President

EATON VANCE INSTITUTIONAL SENIOR
LOAN FUND
By: EATON VANCE MANAGEMENT
AS INVESTMENT ADVISOR

By: /s/ Michael B. Botthof
_____
Name: Michael B. Botthof
Title: Vice President

Signature page to
the Second Amendment to the
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EATON VANCE LIMITED DURATION INCOME FUND
By: EATON VANCE MANAGEMENT
AS IVESTMENT ADVISOR

By: /s/ Michael B. Botthof
_____

Name: Michael B. Botthof
Title: Vice President

EATON VANCE SENIOR FLOATING-RATE TRUST
By: EATON VANCE MANAGEMENT
AS INVESTMENT ADVISOR

By: /s/ Michael B. Botthof
_____

Name: Michael B. Botthof
Title: Vice President

EATON VANCE SENIOR INCOME TRUST
By: EATON VANCE MANAGEMENT
AS INVESTMENT ADVISOR

By: /s/ Michael B. Botthof
_____

Name: Michael B. Botthof
Title: Vice President

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the Second Amendment to the
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EATON VANCE VT FLOATING-RATE INCOME FUND
By: EATON VANCE MANAGEMENT
AS INVESTMENT ADVISOR

By: /s/ Michael B. Botthof
_____
Name: Michael B. Botthof
Title: Vice President

ELF FUNDING TRUST III
By: NEW YORK LIFE INVESTMENT
MANAGEMENT LLC,
as Attorney-in-Fact

By: /s/ Robert H. Dial
_____
Name: Robert H. Dial
Title: Director

NEW YORK LIFE INSURANCE AND ANNUITY
CORPORATION
By: NEW YORK LIFE INVESTMENT
MANAGEMENT LLC,
its Investment Manager

By: /s/ Robert H. Dial
_____
Name: Robert H. Dial
Title: Director

ELT LTD.

By: /s/ Diana M. Himes

Name: Diana M. Himes
Title: Authorized Agent

ENDURANCE CLO I, LTD.
By: ING Capital Advisors LLC,
as Portfolio Manager

By: /s/ Michael J. Campbell
_____

Name: Michael J. Campbell
Title: Managing Director

Signature page to
the Second Amendment to the
CONMED Amended and Restated Credit Agreement

FIDELITY ADVISOR SERIES II: FIDELITY
ADVISOR FLOATING RATE HIGH INCOME FUND

By: /s/ Mark Osterheld

Name: Mark Osterheld
Title: Assistant Treasurer

Signature page to
the Second Amendment to the
CONMED Amended and Restated Credit Agreement

FLAGSHIP CLO 2001-1
By: Flagship Capital Management, Inc.

By: /s/ Colleen Cunniffe
_____

Name: Colleen Cunniffe
Title: Director

FLAGSHIP CLO II
By: Flagship Capital Management, Inc.

By: /s/ Colleen Cunniffe
_____

Name: Colleen Cunniffe
Title: Director

FLEET NATIONAL BANK, a Bank of America company

By: /s/ Christopher C. Holmgren

Name: Christopher C. Holmgren
Title: Senior Vice President

FOREST CREEK CLO, LTD.
By: Deerfield Capital Management LLC,
As its Collateral Manager

By: /s/ Dale Burrow
_____
Name: Dale Burrow
Title: Senior Vice President

FRANKLIN CLO II, LIMITED

By: /s/ David Ardini

Name: David Ardini
Title: Vice President

FRANKLIN CLO IV, LIMITED

By: /s/ David Ardini

Name: David Ardini
Title: Vice President

FRANKLIN FLOATING RATE TRUST

By: /s/ Richard Hsu
_____

Name: Richard Hsu
Title: Assistant Vice President

Signature page to
the Second Amendment to the
CONMED Amended and Restated Credit Agreement

GENERAL ELECTRIC CAPITAL CORPORATION

By: /s/ Brian P. Schwinn

Name: Brian P. Schwinn
Title: Duly Authorized Signatory

Signature page to
the Second Amendment to the
CONMED Amended and Restated Credit Agreement

STATE STREET BANK AND TRUST COMPANY
as Trustee for GMAM GROUP PENSION TRUST I

By: /s/ Russell Ricciardi
_____

Name: Russell Ricciardi
Title: CSO

STATE STREET BANK AND TRUST COMPANY
as Trustee for GENERAL MOTORS WELFARE
BENEFIT TRUST

By: /s/ Russell Ricciardi
_____

Name: Russell Ricciardi
Title: CSO

GRAYSON & CO
By: BOSTON MANAGEMENT AND RESEARCH
As Investment Advisor

By: /s/ Michael B. Botthof
_____
Name: Michael B. Botthof
Title: Vice President

GULF STREAM ASSET MANAGEMENT LLC

By: /s/ Mark Abrahm
_____

Name: Mark Abrahm
Title: Trading/Principal

Signature page to
the Second Amendment to the
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HSBC BANK USA, NATIONAL ASSOCIATION

By: /s/ Stephen J. Gorczynski
_____

Name: Stephen J. Gorczynski
Title: First Vice President

IKB CAPITAL CORPORATION

By: /s/ Wolfgang W. Boeker

Name: Wolfgang W. Boeker
Title: Senior Vice President

INDOSUEZ CAPITAL FUNDING VI, LIMITED
By: LYON CAPITAL MANAGEMENT LLC,
As Collateral Manager

By: /s/ Alexander B. Kenna
_____
Name: Alexander B. Kenna
Title: Portfolio Manager

INVESCO EUROPEAN CDO I S.A.
By: INVESCO SENIOR SECURED
MANAGEMENT, INC.
As Collateral Manager

By: /s/ Thomas H.B. Ewald

Name: Thomas H.B. Ewald
Title: Authorized Signatory

KZH CYPRESSTREE-I LLC

By: /s/ Joyce Fraser-Bryant

Name: Joyce Fraser-Bryant
Title: Authorized Agent

KZH STERLING LLC

By: /s/ Joyce Fraser-Bryant

Name: Joyce Fraser-Bryant
Title: Authorized Agent

LANDMARK III CDO LIMITED
ALADDIN CAPITAL MANAGEMENT LLC

By: /s/ William S. Tutkins

Name: William S. Tutkins
Title: Director

LONG GROVE CLO, LTD.
By: DEERFIELD CAPITAL MANAGEMENT LLC,
As its Collateral Manager

By: /s/ Dale Burrow
_____
Name: Dale Burrow
Title: Senior Vice President

MAGNETITE V CLO, LIMITED

By: /s/ Tom Colwell

Name: Tom Colwell
Title: Authorized Signatory

Signature page to
the Second Amendment to the
CONMED Amended and Restated Credit Agreement

MANUFACTURERS AND TRADERS TRUST COMPANY

By: /s/ David A. Kavney

Name: David A. Kavney
Title: Vice President

MAPLEWOOD (CAYMAN) LIMITED
By: BABSON CAPITAL MANAGEMENT LLC
under delegated authority from
MASSACHUSETTS MUTUAL LIFE
INSURANCE COMPANY
As Investment Manager

By: /s/ William A. Hayes
_____
Name: William A. Hayes
Title: Managing Director

MARINER CDO 2002, LTD.

By: /s/ David Mahon

Name: David Mahon
Title: Vice President

MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY
By: BABSON CAPITAL MANAGEMENT LLC
As Investment Adviser

By: /s/ William A. Hayes
_____
Name: William A. Hayes
Title: Managing Director

MORGAN STANLEY PRIME INCOME TRUST

By: /s/ Elizabeth Bodisch
_____

Name: Elizabeth Bodisch
Title: Authorized Signatory

MOUNTAIN CAPITAL CLO I LTD.

By: /s/ Regina Forman
_____

Name: Regina Forman
Title: Director

MUIRFIELD TRADING LLC

By: /s/ Diana M. Himes
_____

Name: /s/ Diana M. Himes
Title: Assistant Vice President

NAVIGATOR CDO 2003, LTD.

By: /s/ David Mahon
_____

Name: David Mahon
Title: Vice President

NEMEAN CLO, LTD.
By: ING CAPITAL ADVISORS LLC,
As Collateral Manager

By: /s/ Michael J. Campbell
_____
Name: Michael J. Campbell
Title: Managing Director

OXFORD STRATEGIC INCOME FUND
By: EATON VANCE MANAGEMENT
As Investment Advisor

By: /s/ Michael B. Botthof

Name: Michael B. Botthof
Title: Vice President

PACIFICA CDO II, LTD.
By: ALCENTRA INC. as its Investment Manager

By: /s/ Dean Kawai
_____

Name: Dean Kawai
Title: Senior Vice President

PINEHURST TRADING, INC.

By: /s/ Diana M. Himes

Name: Diana M. Himes
Title: Assistant Vice President

RIVIERA FUNDING LLC

By: /s/ Diana M. Himes

Name: Diana M. Himes
Title: Assistant Vice President

ROSEMONT CLO, LTD.
By: DEERFIELD CAPITAL MANAGEMENT LLC,
As its Collateral Manager

By: /s/ Dale Burrow
_____
Name: Dale Burrow
Title: Senior Vice President

SARATOGA CLO I, LIMITED
By: INVESCO SENIOR SECURED
MANAGEMENT, INC.
As Asset Management

By: /s/ Thomas H.B. Ewald
_____
Name: Thomas H.B. Ewald
Title: Authorized Signatory

SENIOR DEBT PORTFOLIO
By: BOSTON MANAGEMENT AND RESEARCH
As Investment Manager

By: /s/ Michael B. Botthof
_____
Name: Michael B. Botthof
Title: Vice President

Signature page to
the Second Amendment to the
CONMED Amended and Restated Credit Agreement

SEQUILS-CENTURION V, LTD.
By: AMERICAN EXPRESS ASSET
MANAGEMENT GROUP INC.,
As Collateral Manager

By: /s/ Robin C. Stancil
_____
Name: Robin C. Stancil
Title: Supervisor- Fixed Income Support Team

Signature page to
the Second Amendment to the
CONMED Amended and Restated Credit Agreement

SEQUILS-CUMBERLAND I, LTD.
By: DEERFIELD CAPITAL MANAGEMENT LLC,
As its Collateral Manager

By: /s/ Dale Burrow
_____
Name: Dale Burrow
Title: Senior Vice President

SEQUILS-ING I (HBDGM), LTD
By: ING CAPITAL ADVISORS LLD,
As Collateral Manager

By: /s/ Michael J. Campbell
_____
Name: Michael J. Campbell
Title: Managing Director

SEQUILS-LIBERTY, LTD.
By: INVESCO SENIOR SECURED
MANAGEMENT, INC.
As Collateral Manager

By: /s/ Thomas H.B. Ewald

Name: Thomas H.B. Ewald
Title: Authorized Signatory

STANFIELD ARBITRAGE CDO, LTD.
By: STANFIELD CAPITAL PARTNERS LLC
As its Collateral Manager

By: /s/ Christopher A. Bondy
_____
Name: Christopher A. Bondy
Title: Partner

STANFIELD CLO LTD.
By: STANFIELD CAPITAL PARTNERS LLC
As its Collateral Manager

By: /s/ Christopher A. Bondy
_____
Name: Christopher A. Bondy
Title: Partner

STEIN ROE & FARNHAM CLO I LTD
By: COLUMBIA MANAGEMENT ADVISORS,
INC. as Portfolio Manager

By: /s/ Colleen Cunniffe
_____

Name: Colleen Cunniffe
Title: Vice President

Signature page to
the Second Amendment to the
CONMED Amended and Restated Credit Agreement

THE SUMITOMO TRUST & BANKING CO., LTD.,
NEW YORK BRANCH

By: /s/ Elizabeth A. Quirk
_____

Name: Elizabeth A. Quirk
Title: Vice President

Signature page to
the Second Amendment to the
CONMED Amended and Restated Credit Agreement

SUNAMERICA SENIOR FLOATING RATE FUND INC.
By: STANFIELD CAPITAL PARTNERS LLC
As Subadvisor

By: /s/ Christopher A. Bondy
_____

Name: Christopher A. Bondy
Title: Partner

TOLLI & CO.
By: EATON VANCE MANAGEMENT
As Investment Advisor

By: /s/ Michael B. Botthof
_____
Name: Michael B. Botthof
Title: Vice President

TORONTO DOMINION (NEW YORK), INC.

By: /s/ Gwen Zirkle

Name: Gwen Zirkle
Title: Vice President

Signature page to
the Second Amendment to the
CONMED Amended and Restated Credit Agreement

TRANSAMERICA BUSINESS CAPITAL
CORPORATION

By: /s/ Brian P. Schwinn

Name: Brian P. Schwinn
Title: Duly Authorized Signatory

THE TRAVELERS INSURANCE COMPANY

By: /s/ Matthew J. McInerny

Name: Matthew J. McInerny
Title: Investment Officer

TRUMBULL THC, LTD.

By: /s/ Suzanne Smith

Name: Suzanne Smith
Title: Attorney-in-Fact

Signature page to
the Second Amendment to the
CONMED Amended and Restated Credit Agreement

VAN KAMPEN SENIOR INCOME TRUST
By: Van Kampen Investment Advisory Corp.

By: /s/ Christina Jamieson
_____

Name: Christina Jamieson
Title: Executive Director

VENTURE CDO 2002, LIMITED
By: MJX ASSET MANAGEMENT LLC,
Its Investment Advisor

By: /s/ Atha Baugh
_____
Name: Atha Baugh
Title: Director

EXHIBIT A

FORM OF ACKNOWLEDGMENT AND CONFIRMATION

1. Reference is made to Second Amendment, dated as of September 23, 2004, (the "*Second Amendment*"), to the Amended and Restated Credit Agreement, dated as of June 30, 2003 (as the same may be further amended, supplemented or otherwise modified from time to time, the "*Credit Agreement*"), among CONMED Corporation, a New York corporation, the several banks and other financial institutions or entities from time to time party thereto (the "*Lenders*"), and JPMorgan Chase Bank, as administrative agent (in such capacity, the "*Administrative Agent*").

2. Each of the parties hereto hereby agrees, with respect to each Security Document to which it is a party:

(a) all of its obligations, liabilities and indebtedness under such Security Document shall remain in full force and effect on a continuous basis after giving effect to the Second Amendment; and

(b) all of the Liens and security interests created and arising under such Security Document remain in full force and effect on a continuous basis, and the perfected status and priority of each such Lien and security interest continues in full force and effect on a continuous basis, unimpaired, uninterrupted and undischarged, after giving effect to the Second Amendment, as collateral security for its obligations, liabilities and indebtedness under the Credit Agreement and under its guarantees in the Security Documents.

3. THIS ACKNOWLEDGMENT AND CONFIRMATION SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

4. This Acknowledgment and Confirmation may be executed by one or more of the parties hereto on any number of separate counterparts (including by telecopy), and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

[rest of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Acknowledgement and Consent to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

CONMED CORPORATION

By: _____

Name:
Title:

ASPEN LABORATORIES, INC.

By: _____

Name:
Title:

CONMED ANDOVER MEDICAL, INC.

By: _____

Name:
Title:

CONMED INTEGRATED O.R. SOLUTIONS, INC.

By: _____

Name:
Title:

ENVISION MEDICAL CORPORATION

By: _____

Name:
Title:

LINVATEC CORPORATION

By: _____

Name:
Title:

LINVATEC BIOMATERIALS INC.

By: _____

Name:
Title:

Exhibit 10.2

AMENDMENT NO. 1
TO
AMENDED AND RESTATED RECEIVABLES PURCHASE AGREEMENT

THIS AMENDMENT NO. 1 TO AMENDED AND RESTATED RECEIVABLES PURCHASE AGREEMENT (this "*Amendment*") dated as of October 20, 2004, is entered into among CONMED RECEIVABLES CORPORATION ("*Seller*"), CONMED CORPORATION ("*Parent*"), as initial Servicer, FLEET NATIONAL BANK, a Bank of America company (together with any other financial institution hereafter party hereto, each a "*Purchaser*" and collectively, the "*Purchasers*") and FLEET NATIONAL BANK, a Bank of America company, as administrator for Purchasers (in such capacity, the "*Administrator*"). Capitalized terms used herein without definition shall have the meanings ascribed thereto in Appendix A of the Receivables Purchase Agreement, referred to below.

PRELIMINARY STATEMENTS

A. Reference is made to that certain Amended and Restated Receivables Purchase Agreement dated as of October 23, 2003 among Seller, Parent, Purchasers and Administrator (as amended, restated, supplemented or modified from time to time, the "*Receivables Purchase Agreement*").

B. The parties hereto have agreed to amend certain provisions of the Receivables Purchase Agreement upon the terms and conditions set forth herein.

SECTION 1. *Amendment*. The parties hereto hereby agree to amend the Receivables Purchase Agreement to delete the definition of Commitment Termination Date set forth in Appendix A of the Receivables Purchase Agreement and substitute the following therefor:

> "*Commitment Termination Date*" means October 21, 2005, as such date may be extended from time to time with the consent of the parties to the Agreement.

SECTION 2. *Representations and Warranties*. Each of the parties hereto hereby represents and warrants to each other, as to itself that:

(a) this Amendment constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms except as enforceability may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity, regardless of whether such enforceability is considered in a proceeding in equity or at law; and

(b) on the date hereof, before and after giving effect to this Amendment, no Liquidation Event has occurred and is continuing.

SECTION 3. *Reference to and Effect on the Transaction Documents*.

(a) Upon the effectiveness of this Amendment, (i) each reference in the Receivables Purchase Agreement to "this Receivables Purchase Agreement", "this Agreement", "hereunder", "hereof", "herein" or words of like import shall mean and be a reference to the Receivables Purchase Agreement as amended or otherwise modified hereby, and (ii) each reference to the Receivables Purchase Agreement in any other Transaction Document or any other document, instrument or agreement executed and/or delivered in connection therewith, shall mean and be a reference to the Receivables Purchase Agreement as amended or otherwise modified hereby.

(b) Except as specifically amended, terminated or otherwise modified above, the terms and conditions of the Receivables Purchase Agreement, of all other Transaction Documents and any other documents, instruments and agreements executed and/or delivered in connection therewith, shall remain in full force and effect and are hereby ratified and confirmed.

(c) The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of the Seller, Parent, Purchasers and Administrator under the Receivables Purchase Agreement or any other Transaction Document or any other document, instrument or agreement executed in connection therewith, nor constitute a waiver of any provision contained therein, in each case except as specifically set forth herein.

SECTION 4. *Execution in Counterparts*. This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page to this Amendment by telecopier shall be effective as delivery of a manually executed counterpart of this Amendment.

SECTION 5. *GOVERNING LAW*.

THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

SECTION 6. *Headings*. Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

[Remainder of Page Deliberately Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by their respective officers as of the date first above written.

CONMED RECEIVABLES CORPORATION, as Seller

By: /s/ Robert D. Shallish, Jr.
_____
Name: Robert D. Shallish, Jr.
Title: Director

CONMED CORPORATION, as initial Servicer

By: /s/ Daniel S. Jonas
_____
Name: Daniel S. Jonas
Title: Vice President - Legal

FLEET NATIONAL BANK, a Bank of America company,
as Purchaser

By: /s/ Christopher Holmgren
_____
Name: Christopher Holmgren
Title: Senior Vice President

FLEET NATIONAL BANK, a Bank of America company,
as Administrator

By: /s/ Christopher Holmgren
_____
Name: Christopher Holmgren
Title: Senior Vice President

Exhibit 31.1

CERTIFICATION PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Eugene R. Corasanti, certify that:

1. I have reviewed this quarterly report on Form 10-Q of CONMED Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

   a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   c) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

November 9, 2004

/s/ Eugene R. Corasanti

Eugene R. Corasanti
Chairman of the Board and
Chief Executive Officer

Exhibit 31.2

CERTIFICATION PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Robert D. Shallish, Jr. certify that:

1. I have reviewed this quarterly report on Form 10-Q of CONMED Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

   a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   c) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

November 9, 2004

/s/ Robert D. Shallish, Jr.

Robert D. Shallish, Jr.
Vice President - Finance and
Chief Financial Officer

Exhibit 32.1

CERTIFICATIONS
Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

Pursuant to section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of section 1350, chapter 63 of title 18, United States Code), each of the undersigned officers of CONMED Corporation, a New York corporation (the "Corporation"), does hereby certify that:

The Quarterly Report on Form 10-Q for the quarter ended September 30, 2004 (the "Form 10-Q") of the Corporation fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 and information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Corporation.

Date: November 9, 2004

/s/ Eugene R. Corasanti

Eugene R. Corasanti
Chairman of the Board and
Chief Executive Officer

Date: November 9, 2004

/s/ Robert D. Shallish, Jr.

Robert D. Shallish, Jr.
Vice President-Finance and
Chief Financial Officer