

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

RONALD P. KELLER,	§	
	§	CASE NO. _____
Plaintiff,	§	
	§	
vs.	§	COMPLAINT FOR PERSONAL
	§	INJURIES AND DAMAGES
	§	
JOHNSON & JOHNSON and	§	
ETHICON, INC.,	§	
	§	
Defendants.	§	DEMAND FOR JURY TRIAL

PLAINTIFF’S ORIGINAL COMPLAINT

NATURE OF THE CASE

1. This is a products liability tort case. Plaintiff Ronald P. Keller developed serious and potentially life-threatening injuries caused by the surgical implantation of the Physiomesh™ Flexible Composite Mesh Device (Physiomesh) to treat an umbilical hernia from which he suffered.

2. Physiomesh is manufactured by Defendant Johnson & Johnson (J&J) and its subsidiary Ethicon, Inc. (Ethicon). Both J&J and Ethicon were responsible for the design, manufacture, production, testing, study, inspection, labeling, marketing, advertising, sales, promotion and/or distribution of the Physiomesh that caused Plaintiff Keller’s injuries.

3. After Plaintiff’s Physiomesh implant, Defendants J&J and Ethicon voluntarily recalled the product implanted in him.

4. As a result of having the J&J/Ethicon Physiomesb implanted in him, Plaintiff has experienced significant physical and mental pain and suffering, sustained permanent injury, undergone medical treatment and corrective surgery and hospitalizations, and suffered additional economic damages.

5. Plaintiff Keller's lawsuit against Defendants J&J and Ethicon asserts claims and seeks damages for negligence; strict product liability for design defect; strict product liability for failure to warn; strict product liability for manufacturing defect; and breach of implied warranty. Plaintiff Keller will seek punitive damages pursuant to N.D. Cent. Code § 32-03.2-11.

JURISDICTION AND VENUE

6. Plaintiff Ronald P. Keller is a resident of the District of North Dakota. Defendant Johnson & Johnson and its wholly owned subsidiary Defendant Ethicon, Inc., are foreign corporations with their principal places of business in a state other than the State of North Dakota.

7. The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §1332. The amount in controversy as to each Defendant exceeds the sum of \$75,000, exclusive of costs and interest, and the action is between citizens of different states.

8. Venue in this District is proper under 28 U.S.C. §1391. The events and omissions giving rise to Plaintiff's causes of action occurred in substantial part in this District, where Defendants transact business.

THE PARTIES

Plaintiff

9. At all relevant times, Plaintiff Ronald P. Keller was a resident and citizen of Benson County, North Dakota.

Defendants

10. Defendant Johnson & Johnson is a New Jersey corporation with its principal place of business located at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08993. Johnson & Johnson has no registered agent in North Dakota but may be served through its chief executive officer, Alex Gorsky, at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08993.

11. Defendant Ethicon, Inc., is a New Jersey corporation with its principal place of business located at PO Box 151, Somerville, New Jersey 08876. Ethicon, Inc. has no registered agent in North Dakota but may be served through the Secretary of State of North Dakota.

FACTUAL ALLEGATIONS

12. On November 16, 2010, Dr. Lane M. Lee implanted a Physiomesh Device (Product Code PHY1515Q) laparoscopically into Ronald Keller to treat his umbilical hernia. The surgery took place at Trinity Hospital in Minot, North Dakota.

13. Plaintiff Keller's condition was not remedied by the laparoscopic procedure. In fact, his condition became steadily worse with persistent abdominal pain and a small bowel obstruction.

14. On May 8, 2011, Plaintiff Ronald Keller was admitted to Sanford Hospital in Bismarck, North Dakota with a small bowel obstruction. The surgeon performing the procedure, Dr. Michael Schmit, noted “a massive amount of well-healed adhesions involving the entire small intestine.” Dr. Schmit removed a portion of Mr. Keller’s small intestine in an attempt to relieve the obstruction. Unfortunately, Mr. Keller’s problems were not resolved by this procedure, as he continued to experience abdominal pain and a partial small bowel obstruction only one month later.

15. On September 16, 2014, Plaintiff Ronald Keller was sent to St. Alexius Medical Center in Bismarck, North Dakota due to abdominal pain. A CT scan revealed “a transition point likely due to adhesions to his mesh in the lower abdomen with findings consistent with small bowel obstruction.” On September 18, 2014, Dr. Brandon M. Helbling performed an exploratory laparotomy with extensive lysis of adhesions.

16. On September 24, 2015, Mr. Keller was again admitted to St. Alexius Hospital in Bismarck, North Dakota for complications caused by Defendants’ Physiomesh. Specifically, Dr. Brandon M. Helbling found the bowel to be densely adhered to the mesh and excised the Physiomesh “that seemed to be a nidus of significant adhesions.” Dr. Helbling then began a lysis of adhesions of the small intestine, which took over 45 minutes. Dr. Helbling noted that “there was some mesh that adhered to the small intestine” that had to be “meticulously cut off.” Mr. Keller then had to undergo an open incisional ventral hernia repair.

17. Defendants J&J and Ethicon were responsible for the research, design, development, testing, manufacture, production, marketing, promotion, distribution and sale

of Physiomesh, including providing the warnings and instructions concerning the hernia mesh product.

18. Among the intended purposes for which Defendants J&J and Ethicon designed, manufactured and sold Physiomesh was use by surgeons for hernia repair surgeries. That was the purpose for which the Physiomesh was implanted in Plaintiff Ronald P. Keller.

19. Defendants represented to Plaintiff and his physicians that their Physiomesh was a safe and effective product for hernia repair.

20. Defendants' Physiomesh was defectively designed and/or manufactured, was not reasonably safe for its intended use in hernia repair, and the risks of the design outweighed any potential benefits associated with the design. As a result of the defective design and/or manufacture of the Physiomesh, there was an unreasonable risk of severe adverse reactions to the mesh or mesh components, including: chronic pain; recurrence of hernia; foreign body response; rejection; infection; inadequate or failure of incorporation/ingrowth; migration; scarification; deformation of mesh; improper wound healing; excessive and chronic inflammation; adhesions to internal organs; erosion; abscess; fistula formation; granulomatous response; seroma formation; nerve damage; tissue damage and/or death; and other complications.

21. Physiomesh has a unique design incorporating five distinct layers: two layers of polyglecaprone-25 (Monocryl) film covering two underlying layers of polydioxanone film (PDS), which in turn coat a polypropylene mesh. This design is not used in any other hernia repair product sold in the United States.

22. The multi-layer coating was represented and promoted by J&J and Ethicon to prevent or minimize adhesion and inflammation, and to facilitate incorporation of the mesh into the body. But the multi-layer coating did not do so. Instead, it prevented adequate incorporation of the mesh into the body and caused or contributed to an intense inflammatory and chronic foreign body response, resulting in an adverse tissue reaction that included migration and damage to surrounding tissue in the form of sclerotic, granulomatous and/or fibrotic tissue, and improper healing.

23. When affixed to the body's tissue, the impermeable multi-layer coating of the Physiomesh prevents fluid escape, which leads to seroma formation, and which in turn can cause infection, abscess formation and other complications.

24. The multi-layer Physiomesh coating provides a breeding ground for bacteria, in which the bacteria cannot be eliminated by the body's immune response. Thus, infection is allowed to proliferate.

25. The multi-layer coating of the J&J and Ethicon Physiomesh is cytotoxic, immunogenic, and not biocompatible. The coating therefore causes or contributes to complications such as delayed wound healing, inflammation, foreign body response, rejection, infection, and other complications.

26. Defendants knew or should have known of the cytotoxic and immunogenic properties of the multi-layer coating of the Physiomesh prior to introducing it into the stream of commerce.

27. The polypropylene mesh portion of the Physiomesh was insufficient to withstand normal abdominal forces, resulting in recurrent hernia formation and/or rupture and deformation of the mesh itself.

28. When the multi-layer coating of the Physiomesh is disrupted and/or degrades, the “naked” polypropylene mesh is exposed to the adjoining tissue and viscera, and can become adhered to organs, causing damage to organs, and potential fistula formation.

29. These manufacturing and design defects associated with the Physiomesh were directly and proximately related to the injuries suffered by Plaintiff Ronald Keller.

30. Neither Plaintiff Keller nor his implanting physician was adequately warned or informed by J&J or Ethicon of the defective and dangerous nature of Physiomesh. Moreover, neither Plaintiff Ronald Keller nor his implanting physician was adequately warned or informed by J&J or Ethicon of the risks associated with the Physiomesh or the frequency, severity, or duration of such risks.

31. The Physiomesh implanted in Plaintiff Ronald Keller failed to reasonably perform as intended. The mesh caused serious injury and had to be surgically removed via invasive surgery, and necessitated additional invasive surgery to repair the hernia that the Physiomesh was initially implanted to treat.

32. Plaintiff Ronald Keller’s severe adverse reaction, and the necessity for surgical removal of the Physiomesh, directly and proximately resulted from the defective and dangerous condition of the product and defective and inadequate warnings by Defendants J&J and Ethicon about the risks associated with the product, and the frequency,

severity and duration of such risks. Plaintiff Keller has suffered, and will continue to suffer, both physical injury and pain and mental anguish, permanent and severe scarring and disfigurement, lost wages and earning capacity, and has incurred substantial medical bills and other expenses, resulting from the defective and dangerous condition of the product and from Defendants' defective and inadequate warnings about the risks associated with the product.

33. In May of 2016, J&J and Ethicon issued a notice entitled "Urgent: Field Safety Notice," relating to its Physiomesh Flexible Composite Mesh—the same product implanted in Plaintiff. They sent such notification to hospitals and medical providers in various countries worldwide. In their safety notice, Defendants advised the providers of "a voluntary product recall" of Physiomesh Flexible Composite Mesh. The recall cited two international device registries reporting data reflecting recurrence/reoperation rates after laparoscopic placement as higher than that observed from a data set relating to patient outcomes after implantation with other mesh.

34. But J&J and Ethicon failed to issue a nationwide recall in the United States, opting instead to simply remove the product from shelves and cease further sales within the United States.

CLAIMS FOR RELIEF

1. NEGLIGENCE

35. Plaintiff realleges all previous paragraphs.

36. Although Defendants J&J and Ethicon had a duty to use reasonable care in designing, testing, inspecting, manufacturing, packaging, labeling, marketing, distributing,

training, and preparing written instructions and warnings for Physiomesh, they failed to do so.

37. Defendants knew, or in the exercise of reasonable care should have known, that the Physiomesh Flexible Composite Mesh Device was defectively and unreasonably designed and/or manufactured, and was unreasonably dangerous and likely to injure patients like Plaintiff Keller in whom Physiomesh was implanted. They also knew or should have known that Plaintiff Keller and his physicians were unaware of the dangers and defects inherent in the Physiomesh.

38. As a direct and proximate result of Defendants' negligence in designing, testing, inspecting, manufacturing, packaging, labeling, marketing, distributing, training and preparing written instructions and warnings for Physiomesh, Plaintiff Ronald Keller suffered injuries and damages as summarized in this Original Complaint.

2. STRICT LIABILITY: DESIGN DEFECT

39. Plaintiff realleges all previous paragraphs.

40. At the time the Physiomesh was implanted in Plaintiff Ronald Keller, the mesh product was defectively designed. As described above, there was an unreasonable risk that the product would not perform safely and effectively for the purposes for which it was intended. Further, Defendants J&J and Ethicon failed to design against such dangers, and failed to provide adequate warnings and instructions concerning these risks.

41. Defendants expected and intended the Physiomesh product to reach users such as Plaintiff Keller in the condition in which the product was sold.

42. The implantation of Physiomesh in Plaintiff was medically reasonable, and was a type of use that Defendants J&J and Ethicon intended and foresaw when they designed, manufactured and sold the product.

43. The risks of the Physiomesh design significantly outweigh any benefits that Defendants contend could be associated with the design. The multi-layer coating, which is not used in any other hernia mesh product sold in the United States, prevents tissue from incorporating into the mesh, leading to encapsulation, deformation, scarification and contraction, migration, erosion and rejection. Additionally, the impermeable multi-layer coating of the Physiomesh leads to seroma formation, provides a breeding ground for infection, and protects bacteria from being eliminated by the body's natural immune response.

44. The multi-layer coating of the Physiomesh, which was marketed, promoted and intended as a barrier against adhesion to the internal organs, was only temporary; it was expected and intended to degrade over time inside the body. Thus, the coating prevented tissue ingrowth in the short term, and degraded in the long-term, eventually leaving the "naked" polypropylene mesh exposed to the internal viscera and tissues. The degradation of the multi-layer coating caused or exacerbated an intense inflammatory and foreign body reaction. Once exposed to the viscera, the polypropylene mesh will inevitably adhere to the viscera, initiating a cascade of adverse consequences. Any purported beneficial purpose of the multi-layer coating (to prevent adhesion to the internal viscera and organs) was non-existent. The product provided no benefit, while substantially increasing the risks to the patient.

45. The polypropylene mesh within the defective multi-layer coating of the Physiomesh was itself dangerous and defective, particularly when used in the manner intended by Defendants in the Physiomesh. When implanted adjacent to the intestines and other internal organs—as Defendants intended for Physiomesh—polypropylene mesh is unreasonably susceptible to adhesion, bowel perforation or erosion, fistula formation and bowel strangulation or hernia incarceration, and other injuries.

46. The polypropylene mesh used in the Physiomesh device was insufficient in strength to withstand the internal forces of the abdomen after implantation, which made the device susceptible to rupture and/or deformation. That occurred with the Physiomesh implanted in Plaintiff Keller.

47. The appropriate treatment for complications associated with Physiomesh involves additional invasive surgery to remove the mesh from the body, thus eliminating any purported benefit that the mesh was intended to provide to the patient. Plaintiff Ronald Keller underwent additional invasive surgery.

48. Physiomesh was designed and intended for intraperitoneal implantation, which involved the product being implanted in contact with the intestines and/or other internal organs. The contact unnecessarily increased the risks of adhesion, erosion, fistula formation, and other injuries.

49. At the time the Physiomesh was implanted in Plaintiff, the warnings and instructions provided by J&J and Ethicon for the Physiomesh were inadequate and defective. As described above, there was an unreasonable risk that the product would not perform safely and effectively for the purposes for which it was intended, and Defendants

failed to design and/or manufacture against such dangers, and failed to provide adequate warnings and instructions concerning these risks.

50. At the time the Physiomesh was implanted in Plaintiff Keller, there were safer feasible alternative designs for hernia mesh products that would have prevented the injuries he suffered.

51. The Physiomesh product costs significantly more than competitive products because of its unique multi-layer coating, even though the multi-layer coating provided no benefit to consumers, and increased the risks to patients implanted with these devices.

52. The Physiomesh implanted in Plaintiff Keller failed to reasonably perform as intended and had to be surgically removed, necessitating further invasive surgery to repair the very issue that the product was intended to repair. Thus, it provided no benefit to him.

53. As a direct and proximate result of the defective and unreasonably dangerous condition of the product, Plaintiff Ronald Keller suffered injuries and damages as summarized in this Original Complaint.

3. STRICT LIABILITY: FAILURE TO WARN

54. Plaintiff realleges all previous paragraphs.

55. At the time the Physiomesh was implanted in Plaintiff Keller, the warnings and instructions Defendants J&J and Ethicon provided for the Physiomesh were inadequate and defective. As described above, there was an unreasonable risk that the product would not perform safely and effectively for the purposes for which it was intended. Defendants

failed to design and/or manufacture against such dangers, and failed to provide adequate warnings and instructions concerning these risks.

56. Defendants expected and intended the Physiomesh product to reach users such as Plaintiff in the condition in which the product was sold.

57. Plaintiff Keller and his physicians were unaware of the defects and dangers of Physiomesh, and were unaware of the frequency, severity, and duration of the defects and risks associated with the Physiomesh.

58. Defendants' Instructions for Use (IFU) provided with the Physiomesh expressly understated and misstated the risks known to be associated specifically with the Physiomesh. The IFUs stated that "Potential adverse reactions are those typically associated with surgically implantable materials." But no other surgical mesh sold in the U.S.—and no other "surgically implantable material"—suffers the same serious design flaws as Physiomesh. And no other device or material contains the dangerous and defective multi-layer coating, which itself causes or increases the risks of numerous complications. Those complications include prevention of mesh incorporation, increased risk of seroma formation, immunologic response, increased risk for infection, and increased inflammatory reaction and foreign body response. Defendants provided no warning to physicians about the risks or increased risks specifically associated with the unique design of the Physiomesh.

59. The Physiomesh IFU failed to adequately warn Plaintiff Keller's physicians of numerous risks which J&J and Ethicon knew or should have known were associated with the product. They include the risk of the Physiomesh's inhibition of tissue

incorporation, pain, immunologic response, dehiscence, encapsulation, rejection, migration, scarification, shrinkage/contraction, adhesion to internal organs and viscera, erosion through adjacent tissue and viscera, intestinal obstruction, failure of repair/hernia recurrence, hernia incarceration or strangulation, or rupture of the mesh.

60. J&J and Ethicon failed to adequately warn Plaintiff Keller or his physicians about the necessity for invasive surgical intervention in the event of complications. Defendants also failed to train the physicians on how to properly treat such complications when they occurred.

61. Defendants failed to adequately warn Plaintiff or his physicians that the necessary surgical removal of the Physiomesh in the event of complications would leave the hernia unrepaired, and would necessitate further medical treatment to attempt to repair the same hernia that the failed Physiomesh was intended to treat.

62. J&J and Ethicon represented to physicians, including Plaintiff Keller's physicians, that the multi-layer coating would prevent or reduce adhesion. They expressly intended for the Physiomesh to be implanted in contact with the intestines and internal organs and marketed and promoted the product for that purpose. But Defendants failed to warn them that the multi-layer coating prevented tissue ingrowth, which is the desired biologic response to an implantable mesh device. They further failed to warn physicians that the multi-layer coating was only temporary and therefore at best would provide only a temporary adhesion barrier. Thus, when the coating inevitably degraded, the exposed polypropylene would become adhered to the organs or tissue.

63. With respect to the complications listed in their warnings, J&J and Ethicon provided no information or warning regarding the frequency, severity and duration of those complications, although the complications associated with Physiomesh were more frequent and severe, and lasted longer than those with safer feasible alternative hernia repair treatments.

64. If Plaintiff Keller or his physicians had been properly warned of the defects and dangers of Physiomesh, and of the frequency, severity and duration of the risks associated with the Physiomesh, he would not have consented to allow the Physiomesh to be implanted in his body, and his physicians would not have implanted the Physiomesh in Plaintiff.

65. As a direct and proximate result of the inadequate and defective warnings and instructions, Plaintiff Ronald Keller suffered injuries and damages as summarized in this Original Complaint.

4. STRICT LIABILITY: MANUFACTURING DEFECT

66. Plaintiff realleges all previous paragraphs.

67. The Physiomesh contained a manufacturing defect when it left the possession of J&J and Ethicon. The Physiomesh differs from their intended result and/or from other ostensibly identical units of the same product line.

68. The manufacturing defects in the Physiomesh were a producing cause of Plaintiff Keller's injuries and damages as specified in this Original Complaint.

5. BREACH OF IMPLIED WARRANTY

69. Plaintiff realleges all previous paragraphs.

70. At the time Defendants J&J and Ethicon designed, manufactured, produced, tested, studied, inspected, labeled, marketed, advertised, sold, promoted and distributed the Physiomesh for use by Plaintiff Keller, they knew of the intended use of the Physiomesh, and impliedly warranted their product to be of merchantable quality, and safe and fit for its intended use.

71. When the Physiomesh was implanted in Plaintiff to treat his hernia, the Physiomesh was being used for the ordinary purposes for which it was intended.

72. Plaintiff, individually and/or by and through his physicians, relied upon Defendants' implied warranties of merchantability in consenting to have the Physiomesh implanted in him.

73. Contrary to such implied warranties, the Physiomesh was not of merchantable quality, and was not safe and/or was not fit for its intended use. The Physiomesh was unreasonably dangerous and unfit for the ordinary purposes for which it was used. Defendants J&J and Ethicon failed to warn of known or reasonably scientifically knowable defects in the Physiomesh.

74. As a direct and proximate result of the conduct of Defendants J&J and Ethicon, Plaintiff Ronald Keller suffered the injuries and damages described in this Original Complaint.

6. PUNITIVE DAMAGES

75. Plaintiff realleges all previous paragraphs.

76. Plaintiff Keller will seek punitive damages pursuant to N.D. Cent. Code § 32-03.2-11.

77. Defendants J&J and Ethicon failed to adequately test and study the Physiomesh to determine and ensure that the product was safe and effective before releasing it for sale for permanent human implantation; and they continued to manufacture and sell Physiomesh after obtaining knowledge and information that the product was defective and unreasonably unsafe.

78. Even though Defendants have other hernia repair mesh devices that do not present the same risks as the Physiomesh Flexible Composite Mesh Device, they developed, designed and sold Physiomesh, and continued to do so, because the Physiomesh has a significantly higher profit margin than other hernia repair products. Defendants J&J and Ethicon were aware of the probable consequences of implantation of the dangerous and defective Physiomesh, including the risk of failure and serious injury, such as suffered by Plaintiff Keller. They willfully and recklessly failed to avoid those consequences, and in doing so, acted intentionally, maliciously and recklessly with regard to the safety of those persons who might foreseeably have been harmed by the Physiomesh product, including Plaintiff Ronald Keller, justifying the imposition of punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Ronald P. Keller seeks judgment against Defendants Johnson & Johnson and Ethicon, Inc., jointly and severally, as follows:

1. economic and non-economic damages in an amount in excess of \$75,000 as to each Defendant, as provided by law and to be supported by the evidence at trial;
2. an award of attorneys' fees and costs of suit, as allowed by law; and

3. such other legal and equitable relief as this Court deems just and proper.

JURY DEMAND

Plaintiff Ronald P. Keller requests a trial by jury.

Respectfully submitted,

/s/ Todd Miller
TODD MILLER (ND #06625)
MIKE MILLER (ND #03419)
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**ATTORNEYS FOR PLAINTIFF
RONALD P. KELLER**

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
RONALD P. KELLER**DEFENDANTS**

JOHNSON & JOHNSON and ETHICON, INC.

(b) County of Residence of First Listed Plaintiff Benson Co., ND
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Todd Miller, SOLBERG STEWART MILLER, 1123 Fifth Ave. S., Fargo,
ND 58103 (701-237-3166)

Attorneys (If Known)

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

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

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|-----------------------------------------|---------------------------------------|----------------------------|---------------------------------------------------------------|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input checked="" type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332Brief description of cause:
Hernia Mesh litigation**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.**DEMANDS**

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See Instructions):

JUDGE _____

DOCKET NUMBER _____

DATE
04/11/2017SIGNATURE OF ATTORNEY OF RECORD
/s/ Todd Miller

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____