

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA**

BRUCE C. BAPTIST V. C. R. BARD, INC. AND DAVOL INC.	CIVIL ACTION NUMBER: SECTION: DIVISION: JUDGE: MAGISTRATE JUDGE: JURY DEMAND
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COMPLAINT

NOW INTO COURT, through undersigned counsel, comes Plaintiff, **BRUCE C. BAPTIST** (“Plaintiff”), to file this Complaint against Defendants, **C. R. BARD, INC. AND DAVOL INC.** (“Defendants”).

PARTIES

1. Plaintiff is an individual of the full age of majority domiciled in Orleans Parish, Louisiana, who was injured as a result of receiving defective hernia mesh researched, designed, developed, tested, manufactured, labeled, packaged, promoted, advertised, marketed, supplied, sold, and/or distributed by Defendants.
2. The following parties are made Defendants:
 - A. **C. R. BARD, INC.** (“Bard”) is a for-profit corporation organized under the laws of New Jersey with its principal place of business in New Jersey at 730 Central Avenue, Murray Hill, New Jersey 07974. At all relevant times, Bard conducted business in Louisiana including, but not limited to, business related to surgical products and medical devices involved in hernia repair such as Perfix Mesh. All acts and omissions of Bard were done on behalf of Bard by its owners, employees, agents,

representatives, and servants in the course and scope of their ownership, employment, agency, representation, and service.

- B. **DAVOL INC.** (“Daval”) is a for-profit corporation organized under the laws of Delaware with its principal place of business in Rhode Island at 100 Crossings Boulevard, Warwick, Rhode Island 02886. At all relevant times, Davol conducted business in Louisiana including, but not limited to, business related to surgical products and medical devices involved in hernia repair such as Perfix Mesh. All acts and omissions of Davol were done on behalf of Davol by its owners, employees, agents, representatives, and servants in the course and scope of their ownership, employment, agency, representation, and service.

JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and Plaintiff and Defendants are citizens of different states.
4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the acts or omissions giving rise to this claim occurred in the Eastern District of Louisiana.
5. Defendants conducted substantial business through the distribution of polypropylene surgical mesh products as well as receipt of substantial compensation and profits from sales of polypropylene surgical mesh products in Louisiana and the Eastern District of Louisiana. While conducting substantial business in Louisiana and the Eastern District of Louisiana, Defendants also made material misrepresentations and omissions of fact with regard to the effectiveness, safety, risks, side effects, contraindications, and complications related to the polypropylene surgical mesh products. In addition, Defendants directly or indirectly promoted, advertised, marketed, supplied, sold, and/or distributed polypropylene surgical mesh products in Louisiana and the Eastern District of Louisiana.

GENERAL ALLEGATIONS

6. In November of 2015, Plaintiff underwent surgery to repair a hernia and Perfix Mesh was inserted during the surgery.
7. As a result of the insertion of the defective Perfix Mesh , Plaintiff suffered injuries including, but not limited to, inflammation, pain, and additional surgery.
8. Defendants researched, designed, developed, tested, manufactured, labeled, packaged, promoted, advertised, marketed, supplied, sold, and/or distributed Perfix Mesh.
9. Perfix Mesh is a polypropylene surgical mesh used in hernia repair. Perfix Mesh has been associated with numerous complications such as erosion, degradation of the mesh, tissue reaction to the mesh, mesh allergic reaction, mesh migration, mesh shrinkage, infection, pain, bleeding, urinary problems, organ perforation, recurrence of hernias, and other complications. Perfix Mesh is extremely difficult to remove once inserted so invasive surgery is needed to remove Perfix Mesh and complete removal is often difficult or impossible.
10. Polypropylene is toxic when inserted into the human body. Polypropylene develops and promotes toxicity once placed in the human body because the cells in the human body attack polypropylene as a foreign substance which promotes a foreign body response resulting in complications such as those suffered by Plaintiff. Further, when polypropylene surgical mesh is sterilized, polypropylene surgical mesh is heated, weakened, and degrades even before being placed in the human body. Moreover, a host of chemicals are used in the manufacture of polypropylene surgical mesh so there are a multitude of other toxic substances released by polypropylene surgical mesh.

11. Defendants' polypropylene surgical mesh is made of woven polypropylene which is a cheap plastic that degrades and erodes through tissue once implanted. The woven design of polypropylene surgical mesh creates small pores or holes. Nerves grow into the small pores or holes and attach to polypropylene surgical mesh soon after implant. As polypropylene surgical mesh erodes, polypropylene surgical mesh pulls and stretches the attached nerves causing debilitating pain.
12. Defendants misrepresented Perfix Mesh as a safe and effective treatment for hernias; wrongly marketed Perfix Mesh as safer and more effective than other available meshes or methods for hernia repair; and improperly minimized the adverse effects of Perfix Mesh.
13. Defendants knew or should have known that Perfix Mesh was not a safe and effective treatment for hernias. Defendants also knew or should have known that Perfix Mesh was considerably less effective and safe than other meshes or methods for hernia repair. Additionally, Defendants knew or should have known that Perfix Mesh was defective and likely to cause severe complications.
14. Defendants knew or should have known of the defective nature of polypropylene surgical mesh including Perfix Mesh, but continued to research, design, develop, test, manufacture, label, package, promote, advertise, market, supply, sell, and/or distribute the polypropylene surgical mesh so as to maximize sales and profits at the expense of the health and safety of the general public and Plaintiff. Defendants acted in conscious disregard for the foreseeable harm caused by polypropylene surgical mesh by not adequately warning the United States Food and Drug Administration, the general public, the medical community, or Plaintiff of the numerous side effects, complications, and contraindications of polypropylene surgical

mesh.

15. Contrary to Defendants' representations, polypropylene surgical mesh has a high rate of failure, injury, and complication; fails to perform as intended; and causes severe and irreversible injuries like those suffered by Plaintiff.
16. Prefix Mesh is unreasonably dangerous and defective including, but not limited to, as follows:
 - A. Polypropylene is toxic in the human body and not inert so polypropylene reacts to human tissues or other human bodily contents adversely affecting patient health.
 - B. Polypropylene surgical mesh harbors infections that adversely affect human tissues and patient health.
 - C. Polypropylene surgical mesh migrates from the location of implantation adversely affecting human tissues or other human bodily contents and patient health.
 - D. Polypropylene surgical mesh abrades human tissues or other human bodily contents adversely affecting patient health.
 - E. Polypropylene surgical mesh regularly fails to perform as a safe and effective treatment for hernia repair such that the patient requires removal of polypropylene surgical mesh or additional medical treatment.
 - F. Polypropylene surgical mesh causes significant injury to patients such that the polypropylene surgical mesh must be removed through invasive surgical intervention.
 - G. Polypropylene surgical mesh becomes embedded in human tissue or other human bodily contents over time such that if removal is necessary, then the removal causes additional damage adversely affecting patient health.
 - H. Polypropylene surgical mesh is defective in shape, composition, weight, chemical, material, physical properties, pore size, mechanical properties, biomechanical properties, elasticity, and engineering.
 - I. Polypropylene surgical mesh erodes into other organs, tissue, muscle, nerves, and bone adversely affecting human tissues or other human bodily contents and patient health.

- J. Defendants knew or should have known about the potential risk of injury as well as the toxicity of polypropylene when placed in the human body but withheld the information.
- K. Defendants failed to design a non-toxic surgical mesh that does not cause injury.
- L. Defendants failed to provide adequate warning of the numerous side effects, complications, and contraindications of polypropylene surgical mesh and the toxicity of polypropylene.

CAUSES OF ACTION

CONSTRUCTION OR COMPOSITION DEFECT PURSUANT TO LA. R.S. 9:2800.55

17. Plaintiff reavers and realleges each and every allegation of this Complaint.

18. Pursuant to La. R.S. 9:2800.55,

A product is unreasonably dangerous in construction or composition if, at the time the product left its manufacturer's control, the product deviated in a material way from the manufacturer's specifications or performance standards for the product or from otherwise identical products manufactured by the same manufacturer.

19. The danger to people including Plaintiff resulting from the construction or composition defects in Perfix Mesh was foreseeable by Defendants.

20. Perfix Mesh is unreasonably dangerous in construction or composition pursuant to La. R.S. 9:2800.55 and damaged Plaintiff.

DESIGN DEFECT PURSUANT TO LA. R.S. 9:2800.56

21. Plaintiff reavers and realleges each and every allegation of this Complaint.

22. Pursuant to La. R.S. 9:2800.56,

A product is unreasonably dangerous in design if, at the time the product left its manufacturer's control: (1) There existed an alternative design for the product that was capable of preventing the claimant's damage; and (2) The likelihood that the product's design would cause the claimant's damage and the gravity of that damage outweighed the burden on the manufacturer of adopting such alternative design and the adverse effect, if any, of such alternative design on the utility of the product. An adequate warning about a product shall

be considered in evaluating the likelihood of damage when the manufacturer has used reasonable care to provide the adequate warning to users and handlers of the product.

23. The danger to people including Plaintiff resulting from the design defects in Perfix Mesh was foreseeable by Defendants.
24. Perfix Mesh is unreasonably dangerous in design pursuant to La. R.S. 9:2800.56 and damaged Plaintiff.

INADEQUATE WARNING PURSUANT TO LA. R.S. 9:2800.57

25. Plaintiff reavers and realleges each and every allegation of this Complaint.
26. Pursuant to La. R.S. 9:2800.57,

A product is unreasonably dangerous because an adequate warning about the product has not been provided if, at the time the product left its manufacturer's control, the product possessed a characteristic that may cause damage and the manufacturer failed to use reasonable care to provide an adequate warning of such characteristic and its danger to users and handlers of the product....A manufacturer of a product who, after the product has left his control, acquires knowledge of a characteristic of the product that may cause damage and the danger of such characteristic, or who would have acquired such knowledge had he acted as a reasonably prudent manufacturer, is liable for damage caused by his subsequent failure to use reasonable care to provide an adequate warning of such characteristic and its danger to users and handlers of the product.

27. The danger to people including Plaintiff resulting from the lack of adequate warning related to Perfix Mesh was foreseeable by Defendants.
28. Perfix Mesh is unreasonably dangerous because of the lack of adequate warning pursuant to La. R.S. 9:2800.57 and damaged Plaintiff.

BREACH OF EXPRESS WARRANTY PURSUANT TO LA. R.S. 9:2800.58

29. Plaintiff reavers and realleges each and every allegation of this Complaint.
30. Pursuant to La. R.S. 9:2800.58,

A product is unreasonably dangerous when it does not conform to an express warranty made at any time by the manufacturer about the product if the express warranty has induced the claimant or another person or entity to use the product and the claimant's damage was proximately caused because the express warranty was untrue.

31. The danger to people including Plaintiff resulting from the failure to conform to express warranties related to Perfix Mesh was foreseeable by Defendants.
32. Perfix Mesh is unreasonably dangerous because of the failure to conform to express warranties pursuant to La. R.S. 9:2800.58 and damaged Plaintiff.

NEGLIGENCE

33. Plaintiff reavers and realleges each and every allegation of this Complaint.
34. Pursuant to Article 2315 of the Louisiana Civil Code,

Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it.
35. The danger to people including Plaintiff related to Perfix Mesh resulting from negligence was foreseeable by Defendants.
36. Defendants were negligent in researching, designing, developing, testing, manufacturing, labeling, packaging, promoting, advertising, marketing, supplying, selling, and/or distributing Perfix Mesh and damaged Plaintiff.

REDHIBITION

37. Plaintiff reavers and realleges each and every allegation of this Complaint.
38. Pursuant to Article 2520 of the Louisiana Civil Code,

The seller warrants the buyer against redhibitory defects, or vices, in the thing sold. A defect is redhibitory when it renders the thing useless, or its use so inconvenient that it must be presumed that a buyer would not have bought the thing had he known of the defect. The existence of such a defect gives a buyer the right to obtain rescission of the sale. A defect is redhibitory also when, without rendering the thing totally useless, it diminishes its usefulness

or its value so that it must be presumed that a buyer would still have bought it but for a lesser price. The existence of such a defect limits the right of a buyer to a reduction of the price.

39. The danger to people including Plaintiff resulting from the redhibitory defects or vices related to Perfix Mesh was foreseeable by Defendants.
40. Perfix Mesh contains redhibitory defects or vices and damaged Plaintiff.

BREACH OF WARRANTY OF FITNESS FOR ORDINARY USE

41. Plaintiff reavers and realleges each and every allegation of this Complaint.
42. Pursuant to Article 2524 of the Louisiana Civil Code,

The thing sold must be reasonably fit for its ordinary use. When the seller has reason to know the particular use the buyer intends for the thing, or the buyer's particular purpose for buying the thing, and that the buyer is relying on the seller's skill or judgment in selecting it, the thing sold must be fit for the buyer's intended use or for his particular purpose. If the thing is not so fit, the buyer's rights are governed by the general rules of conventional obligations.

43. The danger to people including Plaintiff resulting from the breach of warranty of fitness for ordinary use related to Perfix Mesh was foreseeable by Defendants.
44. Perfix Mesh is not reasonably fit for ordinary use and damaged Plaintiff.

BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS

45. Plaintiff reavers and realleges each and every allegation of this Complaint.
46. Defendants knew or should have known of the uses for which Perfix Mesh was intended and impliedly warranted that Perfix Mesh would be of merchantable quality and safe and fit for such uses.
47. The danger to people including Plaintiff resulting from the breach of implied warranty of merchantability and fitness related to Perfix Mesh was foreseeable by Defendants.

48. Perfix Mesh is not of merchantable quality or safe and fit for intended uses and damaged Plaintiff.

DAMAGES

49. Plaintiff reavers and realleges each and every allegation of this Complaint.

50. Plaintiff alleges entitlement to such damages as are reasonable including, but not limited to, the following:

- A. Past, present, and future medical expenses;
- B. Past, present, and future physical pain and suffering;
- C. Past, present, and future mental anxiety and anguish;
- D. Past, present, and future lost wages and earnings;
- E. Past, present, and future loss of earning capacity;
- F. Past, present, and future loss of enjoyment of life; and
- G. All reasonable damages as will be more fully shown at trial.

JURY DEMAND

51. Plaintiff reavers and realleges each and every allegation of this Complaint.

52. Plaintiff is entitled to and demands a trial by jury.

WHEREFORE, Plaintiff, **BRUCE C. BAPTIST**, prays that there be a judgment against Defendants, **C. R. BARD, INC. AND DAVOL INC.**, for all reasonable damages, legal interest, attorney's fees, and costs.

DATED: NOVEMBER 17, 2017

Respectfully Submitted,

/s/ Jessica W. Hayes, Trial Attorney (#28927)

Jessica W. Hayes, Trial Attorney (#28927)

MURRAY LAW FIRM

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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

BAPTIST, BRUCE C.

(b) County of Residence of First Listed Plaintiff Orleans Parish, Louisiana (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Jessica W. Hayes, Trial Attorney (#28927) / Murray Law Firm 650 Poydras Street, Suite 2150 / New Orleans, Louisiana 70130 Telephone: (504) 525-8100 / Facsimile: (504) 584-5249

DEFENDANTS

C. R. BARD, INC. AND DAVOL INC.

County of Residence of First Listed Defendant Union County, New Jersey (IN U.S. PLAINTIFF CASES ONLY)

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

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)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

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

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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 - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332 - Diversity of citizenship. Brief description of cause: Plaintiff suffered injury as a result of insertion of defective mesh manufactured by Defendants during hernia repair

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 11/17/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Jessica W. Hayes, Trial Attorney (#28927)

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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