

November 15, 2019

VIA HAND DELIVERY

Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Administrative Office of the Courts of the State of New Jersey
Richard J. Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08611

**Re: Sept. 6, 2019 Application for Multicounty Litigation Designation for
Prolene Hernia System Mesh Products**

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Dear Judge Grant:

This Firm, along with Riker Danzig Scherer Hyland & Perretti LLP and Butler Snow LLP, represents Defendants Ethicon, Inc. ("Ethicon") and Johnson & Johnson (collectively "Defendants") in certain cases involving Prolene Hernia System products currently pending in New Jersey. These cases -- once again -- are the subject of a Rule 4:38A Multi-County Litigation ("MCL") application filed by Plaintiffs, dated September 6, 2019, which is currently pending before the Administrative Office of the Courts ("AOC"). The AOC issued a Notice to the Bar on October 1, 2019, requesting comments or objections by November 15, 2019. This letter is submitted pursuant to that notice and in response to Plaintiffs' application.

For the reasons discussed in more detail herein, Defendants strongly oppose an MCL designation in these cases. Coordinated litigation, while having some utility under certain circumstances, will have a detrimental effect on the parties and the judiciary here. Prolene Hernia System has been on the market for decades and is widely considered by physicians to be a "gold standard" treatment for inguinal hernia mesh repair. Creating an MCL for the Prolene Hernia System would serve only to invite more individuals and law firms from across the country to file more meritless lawsuits in New Jersey, which will hinder Defendants' ability to challenge each and every one of these cases on their merits quickly and efficiently. An MCL permits most of the cases to hide in the shadows, while only a select few cases are challenged through full discovery and trial.

These cases are currently proceeding efficiently and expeditiously in Middlesex County. Indeed for the past year and a half, the parties have litigated these cases without need for significant Court time, and are actively conducting discovery, including depositions of plaintiffs and health care providers. In short, continuing to litigate these cases on an individual basis will not burden the courts and will be the quickest and most efficient way to resolve these matters.

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This is Plaintiffs' *sixth* attempt to consolidate or coordinate this disparate group of cases. Defendants urge the Court to deny Plaintiffs' application so that the merits of each individual case can be defended and tested.

PROCEDURAL HISTORY

Beginning in late 2017, following heavy attorney advertising, Plaintiffs (largely represented by the same small number of law firms supporting this application) began filing complaints in New Jersey Superior Court, Bergen County, alleging product liability claims related to hernia mesh products manufactured by Ethicon. At that time, none of the Plaintiffs resided in Bergen County, nor did any Plaintiff's counsel have an office in Bergen County. Indeed, the overwhelming majority of Plaintiffs lived outside of New Jersey and received their implants outside of New Jersey, from surgeons practicing in other states. Despite these facts, Plaintiffs once again attempt to use New Jersey's multi-county litigation procedure to manufacture a litigation for their advantage.

I. Plaintiffs' Unsuccessful "Informal" Attempt to Consolidate or Create an MCL for All Hernia Mesh Cases in Bergen County

First attempt: On January 11, 2018, the Lomurro Firm, which represents a significant number of the Plaintiffs, wrote to Bergen County Civil Presiding Judge Robert L. Polifroni asking for a case management conference to discuss consolidation or an MCL created for all hernia mesh cases then-pending in Bergen County. (See Ex. A: Plaintiffs' 1/11/18 Letter to Judge Polifroni). Defendants opposed that request. (See Ex. B: Defendants' 1/26/18 Letter to Judge Polifroni).

Judge Polifroni flatly rejected Plaintiffs' "informal" attempt to achieve MCL designation in Bergen County and reminded the Lomurro Firm of New Jersey's MCL application process. (See Ex. C: Judge Polifroni's January 25, 2018 letter to Plaintiffs' Counsel). In his letter, Judge Polifroni explained that "[d]ecisions by counsel to select a county of venue, and then request to have the matters consolidated and handled by one judge outside of the MCL format, will not be validated by this Court." (*Id.*) Judge Polifroni further noted that "unless the individual plaintiffs live in Bergen County, it seems reasonable the most convenient venue would be the corporate location of the defendants, which appears to be outside of Bergen County." (*Id.*)

II. Plaintiffs' First MCL Application, and Supreme Court's Decision to Coordinate Only Physiomesch, Not Prolene, Cases

Second attempt: On February 28, 2018, Plaintiffs filed a Rule 4:38A Multicounty Litigation Application with the AOC, seeking the creation of an MCL for five different hernia mesh products manufactured by Ethicon, including a product that, at that time, was not even at issue in any case pending in New Jersey. Specifically,

Plaintiffs sought MCL designation for the following products: (1) Physiomesh; (2) PROCEED® Surgical Mesh; (3) PROCEED® Ventral Patch; (4) Prolene Hernia System; and (5) Prolene 3D Patch. Additionally, Plaintiffs requested that the proposed MCL be assigned to The Honorable Rachelle L. Harz in Bergen County.

Defendants timely responded to Plaintiffs' MCL application. In their response, Defendants did not oppose the creation of an MCL for cases involving only Physiomesh, as such an MCL would mirror the federal multidistrict litigation pending in the United States District Court for the Northern District of Georgia and would promote judicial efficiency. Defendants opposed creation of a broader MCL involving so many different products, as it would create complex and unworkable discovery issues, making coordination inefficient and unfairly prejudicial.

The Supreme Court created an MCL for cases involving Physiomesh only, and denied Plaintiffs' request to include the Proceed and Prolene cases. (See Ex. D: Order of Supreme Court of New Jersey, dated July 17, 2018). Atlantic County Superior Court Judge John C. Porto currently presides over the Physiomesh MCL.

III. Plaintiffs' Unsuccessful Cross-Motion to Consolidate Proceed and Prolene Cases

Because cases involving the other hernia mesh products remained in Bergen County – a venue having no connection to Plaintiffs, their claims, or Defendants – Defendants filed motions to transfer all Bergen County Ethicon hernia mesh cases to Somerset County, where Ethicon, the company responsible for the design, manufacture, marketing, sale, and distribution of those products, is located.

Third attempt: In response to Defendants' motion, Plaintiffs filed a cross-motion¹ to consolidate the Proceed and Prolene cases in Bergen County.

Judge Harz granted Defendants' motions to transfer venue, and ordered that "all cases filed by the plaintiffs against the defendants pertaining to personal injury product liability claims concerning hernia mesh other than Physiomesh" be transferred to Middlesex County. (See Ex. F: Transcript of Motion and Opinion, dated Sept. 28, 2018, at 27:1-4).

Judge Harz further observed, "Plaintiff's arguments seeking out this Court amounts to an admission of for[u]m shopping that courts should discourage" and recognized that Plaintiffs were raising "identical" arguments to those raised in their first MCL application "which was rejected by the Supreme Court." (*Id.* at 34:9-14).

Judge Harz also entered an Order denying as moot Plaintiffs' motion to consolidate all Proceed and Prolene hernia mesh cases. (See Ex. G: Oct. 9, 2018 Order).

¹ Defendants argued and the Court agreed that such a motion is not a proper cross-motion. (See Ex. E: Letter from the Hon. Bonnie J. Mizdol, A.J.S.C., to Plaintiffs' counsel.)

IV. Plaintiffs' Second MCL Application for Proceed and Prolene, and Supreme Court's Refusal to Create Prolene MCL

Fourth attempt: On December 3, 2018, Plaintiffs' counsel filed a second MCL application with the AOC. In that application, Plaintiffs anticipated that "hundreds of additional cases will be filed in the coming months[. . .]. (See Ex. H: Dec. 3, 2018 Letter from The Locks Law Firm). Defendants' opposed any MCL designation of the Proceed or Prolene cases but also argued, in the alternative, that any MCL designation should be limited to cases involving Proceed products. (See Ex. I: Jan. 25, 2019 Letter from Defendants' Counsel to the Administrative Office of the Courts).

Despite Plaintiffs' request to coordinate both Proceed and Prolene hernia mesh devices, the Supreme Court created an MCL only for Proceed. (See Ex. J: Order of the Supreme Court, dated March 12, 2019). The related Notice the Bar explained that the Court "determined to designate only the cases involving allegations of injuries from use of Proceed® Surgical Mesh and Proceed® Ventral Patch as multicounty litigation." (See Ex. K: Notice to the Bar, dated May 1, 2019). Indeed, "the Court determined not to designate litigation involving the Prolene® Hernia Mesh System as multicounty litigation." (*Id.* (emphasis added).)

V. Plaintiffs' Unsuccessful Motion to Consolidate Prolene Cases

Fifth attempt: Undeterred by Judge Polifroni's, Judge Harz's and the Supreme Court's refusal to consolidate or create an MCL for Prolene cases, Plaintiffs' then sought an end-run around the MCL process, and filed a motion to consolidate the cases in Middlesex County. Plaintiffs even admit in their current MCL application that they filed that motion to consolidate because they had "been denied MCL designation for PHS twice..." (See MCL Application at 2.)

On August 16, 2019, Presiding Judge Jamie D. Happas, P.J.Cv. denied Plaintiffs' motion to consolidate. (See Ex. L: Order denying motion to consolidate, dated Aug. 16, 2019.)

VI. Plaintiffs' Third MCL Petition for Prolene Cases

Sixth attempt: Continuing their pursuit to avoid individual scrutiny in Prolene cases, Plaintiffs filed this MCL petition on September 6, 2019. Defendants timely submit this response.

THE PROLENE HERNIA SYSTEM

There are multiple different types of hernias,² each characterized largely by their anatomical location and presentation and which can require different treatment. Common hernias locations include inguinal, ventral, and umbilical.³ For many years, surgeons have repaired hernias using medical devices made of mesh. There are over one million hernia repair surgeries performed each year in the United States alone. By the year 2000, more than 90% of hernia repair surgeries for inguinal hernias utilized a mesh product.⁴ The mesh in many of these devices is made from polypropylene-based materials. Depending on the surgeon's repair technique, the mesh is typically placed either under and/or over the hernia and held in place utilizing one of several fixation methods. The mesh acts as "scaffolding" for new growth of the patient's own tissue, which eventually incorporates the mesh into the surrounding area to provide the needed support.

For more than 50 years, Ethicon, Inc. has manufactured and sold a number of distinct hernia mesh devices. Plaintiffs' current application seeks an MCL designation for the Prolene Hernia System, which was cleared by the FDA and launched more than twenty years ago, in 1997, and remains widely used today. It is a three-dimensional, non-absorbable mesh medical device with an onlay and underlay patch that attaches to tissue on both sides of the hernia, and is most frequently used to repair inguinal hernias.

Below is an image of the Prolene Hernia System:



² A hernia is a hole in the muscular layer of the abdominal wall, through which pre-peritoneal or intra-abdominal contents can protrude. This protrusion results in a bulge, which is often associated with abdominal discomfort and cosmetic deformity. An untreated hernia can also lead to further medical complications.

³ An inguinal hernia is a defect in the abdominal wall that occurs through an area of weakening of the muscle layers of the lower abdominal wall. A ventral hernia is a defect in the abdominal wall (usually midline) that occurs along the scar formed by prior abdominal surgery. An umbilical hernia is a hernia that develops at the umbilicus through a weakened layer of the abdominal wall.

⁴<https://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/ImplantsandProsthetics/HerniaSurgicalMesh/default.htm>.

ARGUMENT

I. The Court Should Deny Plaintiffs' Application Because Creating an MCL Will Only Inundate the Docket and Lead to Protracted Litigation

The Court should deny Plaintiffs' application for an MCL and permit the cases to proceed individually in their current venue, which has the judicial resources and support staff to handle these actions. Creating an MCL under these circumstances would simply generate a flood of litigation by foreign plaintiffs raising meritless claims and seeking to take advantage of New Jersey's centralized litigation process; it would not further the goals and policy of Rule 4:38A or AOC Directive #02-19.

The reality is that all hernia repair surgeries, including those using mesh, can lead to complications. The mere fact that on a nationwide basis there are patients with these devices that have experienced complications does not establish that these devices are defective. Indeed, patients can experience medical complications with any medical device.

The MDL judge in the In Re Mentor Corp. Obtape Transobturator Sling Prods. Liab. Litig. has recognized that mere creation of an MCL allows plaintiffs and their counsel to "park" cases with no factual or legal basis for recovery and do little to no work on those cases while the parties focus on a handful of cases selected for work-up, in hopes of collecting from a global settlement in the future:

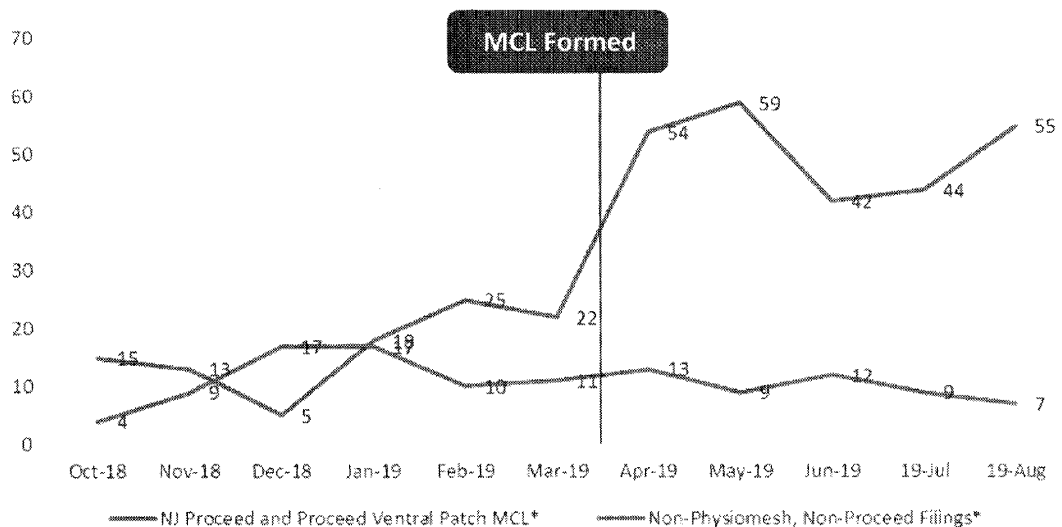
Although one of the purposes of MDL consolidation is to allow for more efficient pretrial management of cases with common issues of law and fact, the evolution of the MDL process toward providing an alternative dispute resolution forum for global settlements has produced incentives for the filing of cases that otherwise would not be filed if they had to stand on their own merit as a stand-alone action. Some lawyers seem to think that their case will be swept into the MDL where a global settlement will be reached, allowing them to obtain a recovery without the individual merit of their case being scrutinized as closely as it would if it proceeded as a separate individual action.

[2016 U.S. Dist. LEXIS 121608, *5 (M.D. Ga., Sept. 7, 2016), Ex. M.]

The hernia mesh MCLs in New Jersey provide further evidence of this phenomenon. Without an MCL, the number of complaints filed involving the Prolene Hernia System has lagged substantially behind the filings of cases involving the Physiomes and Proceed products.

Following the creation of the Proceed MCL in March 2019, the number of filings spiked. In the seven (7) months following creation of the MCL, through October 4, Plaintiffs filed approximately 325 Proceed cases, only 13 of whom reside in New Jersey.

By contrast, without an MCL, the Prolene filings remained low. From the May 1, 2019 Order expressly denying Plaintiffs' request for a Prolene MCL through October 4, 2019, only about 29 new Prolene cases were filed. The following chart depicts the reality that creation of an MCL simply generates more cases.

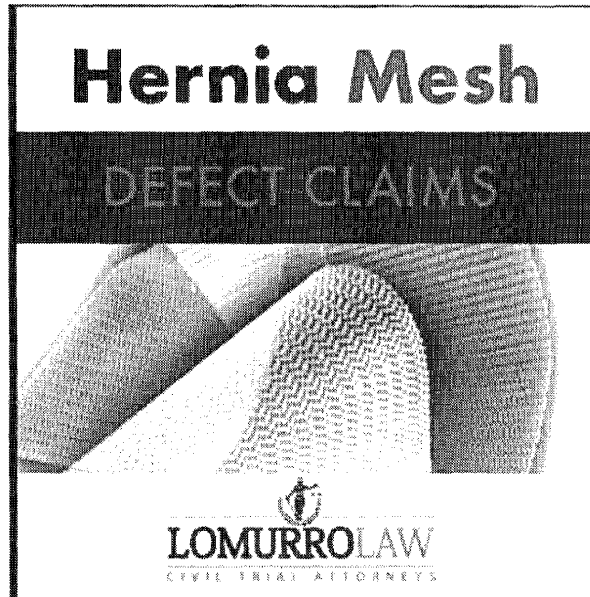


Moreover, the creation of an MCL typically leads to the creation of a "Common Benefit Fund" to provide additional compensation for Plaintiffs' attorneys, which incentivizes multiple firms to work on the cases, increasing litigation costs and ultimately can hinder the efficient resolution of these matters. (See, e.g., Ex. N: In Re: Proceed Mesh Litigation, Case No. 630, Order Regarding Management of Timekeeping, Cost Reimbursement and Related Common Benefit Issues, Oct. 17, 2019.)

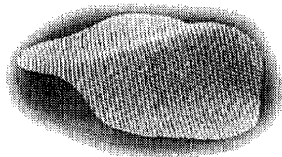
The Role of Attorney Advertising

To attract plaintiffs for these MCLs, Plaintiffs' attorneys throughout the country engage in extensive attorney advertising. Here, rather than advertising for a specific product, however, they have cast a wide net, publishing general advertisements

related to "Hernia Mesh" or "Hernia Surgical Mesh." The following are samples of advertisements posted on publicly available social media pages:⁵



Hernia Mesh
DEFECT CLAIMS



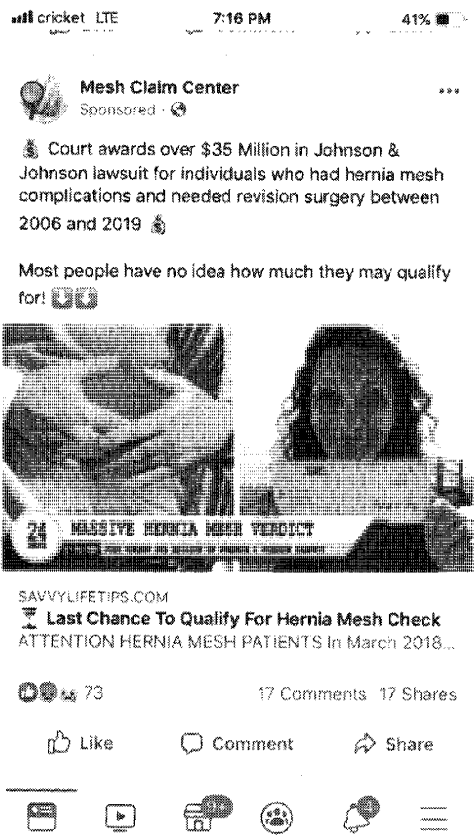
LOMURROLAW
CIVIL TRIAL ATTORNEYS

Freehold, NJ



⁵ See <https://www.facebook.com/pages/category/Lawyer---Law-Firm/Hernia-Mesh-Defects-374846209633625/>.

Unfortunately, some attorneys or related persons or entities, including litigation funding companies, publish false advertisements in an effort to entice individuals to file lawsuits.⁶ The following particularly egregious example claims that a jury had awarded \$35 million against Johnson & Johnson in a hernia mesh case. There has been no such verdict.



These and other false or misleading advertisements have led to a growing concern among governments, and the medical industry because such advertisements, which focus only on side effects or complications without mentioning any benefits of medicines or medical devices, can endanger patients by leading them to stop taking medications and creating distrust of their doctors.^{7,8}

⁶ Putative plaintiffs often are signed up and complaints filed without the plaintiff ever having met or spoken with their attorney. Additionally, and not infrequently, there are cases in which plaintiffs' counsel cannot find or produce their own client when the case is actually selected for discovery.

⁷ At least two states have taken legislative action to prevent such misleading advertisements by requiring legal advertisements soliciting clients and targeting prescription medications or medical devices to include an express warning not to stop taking their medication without consulting their physician, and to state that the medicine or device remains approved by the

In addition, the Federal Trade Commission (FTC) has recently recognized the legal issues with these advertisements, stating it “has sent letters to seven legal practitioners and lead generators expressing concerns that some television advertisements that solicit clients for personal injury lawsuits against drug manufacturers may be deceptive or unfair under the FTC Act. The FTC is not publicly identifying who received the letters.”⁹

A Large Number of Plaintiffs Does Not Equate to Merit

There is also evidence of a very concerning and growing trend of litigation funding companies and marketing firms targeting individuals treated with medical devices to lure them into undergoing unnecessary surgery so that those individuals will be more lucrative Plaintiffs in a coordinated MCL or MDL against medical device companies.¹⁰ In fact, a physician who had allegedly been part of the scheme to entice these individuals to undergo unnecessary surgery was recently indicted by federal prosecutors.¹¹

In addition, in the Accutane litigation, this State saw firsthand how the establishment of an MCL can lead to mass filings of meritless claims. After the creation of the Accutane MCL, there was a significant increase in the number of cases filed, growing to approximately 7,800 cases. However, nearly all of those cases were either dismissed via dispositive motions or voluntarily dismissed by the plaintiffs.

FDA. See S.B. 0352, 111 Gen. Assemb., Reg. Sess. (Tenn. 2019); see also S.B. 1189, 86th Leg. (Tex. 2019).

⁸ In 2016, the American Medical Association also recommended that all attorney advertisements include a warning that patients should consult a physician before discontinuing any medication. AMA, AMA Adopts New Policies on Final Day of Annual Meeting (June 15, 2016) (<https://www.ama-assn.org/ama-adopts-new-policies-final-day-annual-meeting>).

⁹ See FTC Press Release, dated Sept. 29, 2019, available at https://www.ftc.gov/news-events/press-releases/2019/09/ftc-flags-potentially-unlawful-tv-ads-prescription-drug-lawsuits?utm_source=govdelivery&utm_source=Drug+and+Device+Law&utm_campaign=9cc75e7036-RSS_EMAIL_CAMPAIGN&utm_medium=email&utm_term=0_148a635382-9cc75e7036-73496213.

¹⁰ See, e.g., Matthew Goldstein, How Profiteers Lure Women into Often-Unneeded Surgery, N.Y. Times, Apr. 14, 2018, available at <https://www.nytimes.com/2018/04/14/business/vaginal-mesh-surgery-lawsuits-financing.html>.

¹¹ “The indictment said the two men had been part of plan ‘to entice the victims’ to undergo the surgery while ‘falsely and fraudulently’ describing the health risks associated with pelvic mesh implants and playing down the possible complications from removal surgery.” Matthew Goldstein, Two Men Charged in Pelvic Mesh Removal Scheme, N.Y. Times, May 24, 2019, available at <https://www.nytimes.com/2019/05/24/business/vaginal-mesh-surgery-arrests.html>.

Jurisdictions across the country have experienced similar outcomes when they establish a centralized management or multidistrict litigation. For example, in the Baycol litigation, initially there were a moderate number of cases alleging that the medication caused patients a higher risk of rhabdomyolysis. After the MDL was established in the United States District Court for the District of Minnesota, tens of thousands of cases were filed, alleging complications other than rhabdomyolysis that clogged the courts. Ultimately, the parties resolved only the cases involving rhabdomyolysis.

Likewise, after the Chinese-manufactured drywall products liability MDL was created, plaintiffs started bringing lawsuits against American drywall manufacturers, making similar arguments. Plaintiffs bringing claims against American drywall manufacturers sought centralization of four actions pursuant to 28 U.S.C. § 1407. There, Plaintiffs' motion promised "thousands" of cases. The United States Judicial Panel on Multidistrict Litigation denied the plaintiffs' motion, finding that the plaintiffs "have not convinced us that any efficiencies would outweigh the multiple individualized issues, including ones of liability and causation, that these actions appear to present." (Ex. O: Order Denying Transfer, In re: American-Manufactured Drywall Prod. Liab. Litig., June 8, 2010.) After the denial, no meaningful litigation developed.¹²

In sum, establishing an MCL here for the Prolene Hernia Mesh System, which is still on the market and is a widely-accepted and well-regarded product for hernia mesh repair, will result in a flood of litigation that will unreasonably delay the progress and complicate the processing of the actions already pending in the Superior Court. This is not only bad for Defendants headquartered in this State, but it is particularly harmful for patients who may be led to believe they need to undergo unnecessary surgery to remove a product that is helping them (often against their doctors' recommendations). It also would be harmful to the Court system because of the time and expense of an MCL, including the toll on New Jersey citizens forced to sit on juries. Accutane, Baycol, and the Drywall litigations are just some examples that demonstrate how significant judicial resources will be expended to resolve baseless lawsuits filed solely because the opportunity was provided through an MCL or MDL.

¹² In addition, many lawsuits filed after an MDL is established are later subject to dismissal on procedural grounds for failing to provide fundamental information about the plaintiffs' claims. For example, in the Abilify MDL, hundreds of plaintiffs who filed lawsuits after the establishment of the MDL failed to provide requested plaintiff profile forms. The forms requested basic information such as the plaintiff's date of birth, when they used the drug, and the name of their prescribing physician. See Nathan Hale, Drugmakers Aim to Bump Delinquent Plaintiffs in Abilify MDL, Law360, Jan. 16, 2019, available at <https://www.law360.com/florida/articles/1119387/drugmakers-aim-to-bump-delinquent-plaintiffs-in-abilify-mdl>.

Here, there is no need to upend the current state of the litigation. There are only a few firms representing Plaintiffs and the parties have been, and will continue to be, able to work well together regarding these actions.

II. The Court Should Deny Plaintiffs' Application Because Plaintiffs Have not Met the Criteria for an MCL Designation

In determining whether centralization of cases is warranted, the Court applies the factors contained in AOC Directive #02-19. Specifically, they include whether the cases possess, among other things, the following characteristics: common recurrent issues of law and fact; a large number of parties; and a high degree of commonality among injuries or damages among plaintiffs. See AOC Directive #02-19, Multicounty Litigation Guidelines and Criteria for Designation (Revised), at 1-2. The Court also should consider administrative factors including, but not limited to: whether there is a risk that centralization will unreasonably delay the progress, increase the expense, or complicate the processing of any action; whether centralized management is fair and convenient to the parties, witnesses, and counsel; whether coordinated discovery would be advantageous; and whether there are related matters pending in federal court or in other state courts that require coordination with a single New Jersey judge. Id.

Here, the administrative factors are particularly relevant to the determination that MCL designation is unwarranted for these products. While Defendants acknowledge that a number of Prolene cases have been filed in New Jersey to date, creation of an MCL here would only serve to encourage the conduct that has occurred – the overbroad and false advertising for “hernia mesh” that led to an inventory of meritless cases – and, in turn, further burden the court system and perpetrate unfairness to defendants. Moreover, there is no corresponding federal court MDL involving these products, and centralization could unreasonably delay the progress and complicate the processing of and progress made in the actions already pending in the Superior Court. Accordingly, the administrative factors are not met.

In addition, there are distinct issues of law and fact within and among the cases involving these different products that make an MCL inappropriate. Numerous factors affect the success of a hernia repair. These include patient characteristics (e.g., obesity, diabetes, smoking, and other risk factors), the characteristics of the hernia itself, the surgical technique used to repair the hernia, and the training and skill of the individual surgeon. In the overwhelming majority of cases, the facts concerning each of these factors will be developed by testimony outside the state of New Jersey. Whatever the jurisdiction, the individualized nature of hernia claims makes them ill-suited for broad brush treatment.

State and federal courts have routinely reminded litigants that coordination or centralization of litigation “should be the last solution after considered review of all

other options.” See, e.g., In re: Linear Gadolinium-Based Contrast Agents Products Liability Litig., Case MDL No. 2868, Oct. 10, 2018 Order Denying Transfer (J.P.M.L) (quoting In re: Best Buy Co., Inc., Cal. Song-Beverly Credit Card Act Litig., 804 F. Supp. 2d 1376, 1378 (J.P.M.L. 2011)). Here, the “other option” of litigating these cases individually is appropriate, and it is working. The Court should not change the procedural posture of these cases.

Moreover, the jurisdiction in which the Prolene Hernia System cases are currently venued has adequate staffing and judicial resources to handle the existing and potential case load for the relatively modest number of cases involving the Prolene Hernia System on an individual basis. Indeed, that is one of the stated reasons why the cases involving hernia mesh products were transferred to that vicinage. (See Ex. F: Transcript of Motion and Opinion, dated Sept. 28, 2018, at 36:22-37:2). Plaintiffs have identified no problem whatsoever with the orderly handling of the cases, and as a matter of fact they are proceeding efficiently.

III. Potential MCL Venues

AOC and court rules set forth certain factors that should be considered in determining which venue an MCL should be assigned. Specifically, the MCL Guidelines and Criteria for Designation, as promulgated by Directive #02-19 and in accordance with Rule 4:38A, provide that “[i]ssues of fairness, geographical location of parties and attorneys, and the existing civil and multicounty litigation caseload in the vicinage” are factors to be considered in determining where to assign an MCL.

Defendants defer to the Court with respect to the location of an MCL – if one is created – and offer the following information to assist the Court in making its determination:

- Atlantic County – As noted in Plaintiffs’ application, the Physiomesh and Proceed MCLs are pending in Atlantic County before Judge Porto. In the event another MCL is created, the Court and the parties would benefit from coordination in this venue. In addition, Atlantic County has the least number of active MCLs pending at this time, and the least number of MCL cases. Atlantic County had only 935 MCL cases pending as of August 2019, a 14% decrease from the prior year, with a backlog of only 57 cases. See <https://njcourts.gov/public/stats.html>.
- Bergen County – Bergen County is a large vicinage in Northern New Jersey that has the judicial resources and staffing needed to handle an MCL. Plaintiffs intentionally sought out Bergen County with the intention that Judge Harz would preside over an MCL. Nevertheless, Judge Polifroni advised Plaintiffs that Bergen County was not the most suitable venue and Judge Harz appropriately transferred all cases involving Ethicon’s hernia mesh products to Middlesex County. In addition, as of August 2019, there were

12,557 MCL cases pending in Bergen County, a 4% increase over the past year, with a backlog of 11,292 cases. See <https://njcourts.gov/public/stats.html>.

- Middlesex County – Middlesex County is currently home to the most active and complex MCLs pending at this time. As of August 2019, there were 4,545 non-asbestos MCL cases pending in Middlesex County, a 53% increase from the previous year, with a backlog of 2,613 cases. See <https://njcourts.gov/public/stats.html>.

CONCLUSION

In conclusion, Defendants oppose the creation of an MCL involving the Prolene Hernia System. There is no question that creation of an MCL for these products would only serve to trigger the mass filing of baseless lawsuits by litigants looking to take advantage of coordinated litigation that would drain the resources of the judiciary and the State. On the contrary, individualized litigation of each of these cases is appropriate, and manageable by the judiciary and the parties.

Respectfully submitted,



David R. Kott

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January 11, 2018

VIA REGULAR MAIL

Hon. Robert L. Polifroni, P.J. Cv.
Bergen County Superior Court
Bergen County Justice Center
10 Main St.
Hackensack, NJ 07601

Re: In re Ethicon Hernia Mesh Litigation

Dear Judge Polifroni:

Our office, in conjunction with several other firms, has filed 16 product liability cases in Bergen County against Ethicon, Inc. and Johnson & Johnson. The complaints assert that various hernia mesh products manufactured, marketed, and sold by these defendants are defective. All lawsuits involve the same defendants, and all involve the failure of one or more of their hernia mesh products. We anticipate filing well over one hundred such lawsuits in the near future.

To date, the 16 cases have been assigned to 9 different Judges: Judge Thurber (4 cases), Judge Perez-Friscia (3 cases), Judge O'Dwyer (3 cases), Judge DeLuca (1 case), Judge De La Cruz (1 case), Judge Farrington (1 case), Judge Powers (1 case), Judge Padovano (1 case), and Judge Harz (1 case). A list of the cases is attached. Defendants have filed timely answers on two of the 16 cases. Discovery has not yet begun.

Due to the nature and breadth of this litigation, we feel that it would be most efficient to schedule a case management conference with all counsel to discuss the consolidation of these cases for discovery or an MCL application.

I am sending a copy of this letter to defense counsel, and to all attorneys who have indicated they have or may be filing a similar claim. I am confident that all counsel will work together to efficiently and expeditiously handle these cases.

Your Honor's kind consideration of this request will be most appreciated.

Respectfully submitted,



ABBOTT S. BROWN, ESQ.

ASB/slm

Encl

cc: Hon. Estela M. De La Cruz (via regular mail w/encl)
Hon. James J. Deluca (via regular mail w/encl)
Hon. Christine A. Farrington (via regular mail w/encl)
Hon. Rachelle L. Harz (via regular mail w/encl)
Hon. John D. O'Dwyer (via regular mail w/encl)
Hon. Gregg A. Padovano (via regular mail w/encl)
Hon. Lisa Perez-Friscia (via regular mail w/encl)
Hon. Charles E. Powers (via regular mail w/encl)
Hon. Mary F. Thurber (via regular mail w/encl)
Kelly S. Crawford, Esq. (via regular mail w/encl)
Kelsey Stokes, Esq. (via electronic mail w/encl)
Adam Evans, Esq. (via electronic mail w/encl)
Robert Price, Esq. (via electronic mail w/encl)
Michael Daly, Esq. (via electronic mail w/encl)

PENDING ETHICON HERNIA MESH CASES - as of January 11, 2018

DOCKET NUMBER	PLAINTIFF	JUDGE
BER-L-7065-17	JASON COTTLE	JUDGE JAMES J. DELUCA
BER-L-7836-17	RICHARD BASSETT	JUDGE JOHN D. O'DWYER
BER-L-8037-17	ILENE GOLD	JUDGE JOHN D. O'DWYER
BER-L-8276-17	KENNETH NOAKES	JUDGE CHRISTINE A. FARRINGTON
BER-L-8572-17	SUSIE FOWLER	JUDGE RACHELLE L. HARZ
BER-L-8827-17	CHARLES GRIFFIN	JUDGE MARY F. THURBER
BER-L-8829-17	CHRISTINA LINNENBRINK	JUDGE MARY F. THURBER
BER-L-8998-17	CASSANDRA CAMPBELL	JUDGE LISA PEREZ-FRISCIA
BER-L-9127-17	MARVIN MARTIN	JUDGE MARY F. THURBER
BER-L-9130-17	JOHN RUIZ	JUDGE MARY F. THURBER
BER-L-9133-17	WALTER TREBOLO, JR.	JUDGE JOHN D. O'DWYER
BER-L-9151-17	BRENDA GATELEY	JUDGE ESTELA M. DE LA CRUZ
BER-L-184-18	SHONNA REDDING	JUDGE CHARLES E. POWERS
BER-L-197-18	MELISSA RICE	JUDGE LISA PEREZ-FRISCIA
BER-L-198-18	NORMAN BEAN	JUDGE LISA PEREZ-FRISCIA
BER-L-207-18	ALAN ALUMBAUGH	JUDGE GREGG A. PADOVANO

January 26, 2018

VIA HAND DELIVERY

Hon. Robert L. Polifroni, P.J. Cv.
Bergen County Superior Court
Bergen County Courthouse
10 Main Street, 3rd Floor Rotunda
Hackensack, NJ 07601

Re: Ethicon Hernia Mesh Litigation

Dear Judge Polifroni:

This Firm, along with our co-counsel Riker Danzig Scherer Hyland & Perretti LLP and Butler Snow LLP, represent Defendants Ethicon, Inc. and Johnson & Johnson (hereinafter collectively "Ethicon") in sixteen recently filed actions in Bergen County related to hernia mesh products.¹ We are in receipt of plaintiffs' counsel, Abbot S. Brown, Esq.'s letter to the Court requesting a case management conference with all counsel involved in these actions. We write to clarify and respond to some of the statements contained in that letter.

Ethicon manufactures more than a dozen different mesh products indicated for the treatment of hernia. Plaintiffs implicitly suggest that any case involving any hernia mesh product manufactured by Ethicon would be appropriate for consolidation. However, there are many important differences among these products, including differences in design, materials, method of manufacture, place of manufacture, and indications. The products were developed, and manufactured at different times and different locations over decades. Indeed, plaintiffs acknowledge that the sixteen filed cases involve at least three distinct hernia mesh products. Some of the cases assert claims related to Ethicon PhysiomesTM (which was withdrawn from the market in 2016), whereas the majority of the other cases involve claims related to different products, namely the Proceed Ventral Patch and Proceed (which are currently marketed). Both on discovery and the merits, there will not be sufficient common factual and legal issues arising out of the same series of occurrences required for consolidation.

Specifically, it would be wholly improper under New Jersey law and Rule 4:38-1, as well as Rule 4:38A and Directive #08-12, to consolidate cases involving different hernia mesh products, i.e. non-PhysiomesTM and PhysiomesTM cases. Accordingly, Ethicon objects to any attempt by plaintiffs to consolidate all cases involving any Ethicon hernia mesh product, and will oppose any application seeking such relief. Similarly, it would also be improper under New Jersey law and the Court

¹ While not changing our analysis, for completeness there are other additional cases not referenced in Plaintiffs' letter. Two cases are venued in Bergen County, and one of the plaintiffs in those cases is from Essex County and the other is an out of state plaintiff. There are five other cases pending in Monmouth County, Middlesex County, Atlantic County (2) and Ocean County. Of these seven cases, three are PhysiomesTM.

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BOSTON

HARTFORD

STAMFORD

NEW YORK

NEWARK

EAST BRUNSWICK

PHILADELPHIA

WILMINGTON

WASHINGTON, DC

Hon. Robert L. Polifroni, P.J. Cv.
January 26, 2018
Page 2

Rules to consolidate all of the cases involving the various non-PhysiomesTM products, and Ethicon likewise will object to and oppose any such application as well.

With respect to the cases involving Ethicon PhysiomesTM products, we do not believe consolidation or an MCL application is ripe for discussion. To date, only two of the cases referred to by Mr. Brown in his letter have been filed alleging claims involving an Ethicon PhysiomesTM product: Martin v. Ethicon, Inc. et al., Docket No. BER-L-9127-17 and Ruiz v. Ethicon, Inc., et al., Docket No. BER-L-9128-17. Both of those cases are pending before Judge Thurber. Respectfully, we do not believe that the filing of these two cases warrants a discussion of an MCL application at this time. Indeed, it is inconceivable that the Supreme Court would grant an MCL application based on the filing of two cases.

Moreover, plaintiffs' counsel's request is also premature because Ethicon is still in the process of reviewing the various Complaints filed in these actions to determine whether venue is proper in Bergen County, or whether venue would be more convenient in another New Jersey vicinage. In fact, not a single plaintiff in any of the sixteen filed actions is a resident of Bergen County; indeed, not a single plaintiff is a resident of New Jersey. It is likely that the issues related to venue could be the subject of a motion in the near future. Accordingly, it would be inefficient to engage in consolidation discussions regarding cases that could be transferred to a different venue.

We will be prepared to discuss these matters with Your Honor in the event that Your Honor decides to conduct a conference. Please do not hesitate to contact us if the Court has any questions.

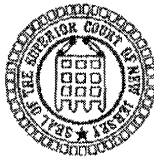
Respectfully submitted,

David R. Kott

cc: Hon. Estela M. De La Cruz (via regular mail)
Hon. James J. Deluca (via regular mail)
Hon. Christine A. Farrington (via regular mail)
Hon. Rachelle L. Harz (via regular mail)
Hon. John D. O'Dwyer (via regular mail)
Hon. Gregg A. Padovano (via regular mail)
Hon. Lisa Perez-Friscia (via regular mail)
Hon. Charles E. Powers (via regular mail)
Hon. Mary F. Thurber (via regular mail)
Abbott S. Brown, Esq. (via regular mail and email)
Kelsey Stokes, Esq. (via regular mail and email)
Adam Evans, Esq. (via regular mail and email)
Robert Price, Esq. (via regular mail and email)
Michael Daly, Esq. (via regular mail and email)

SUPERIOR COURT OF NEW JERSEY

ROBERT L. POLIFRONI, P.J.Cv.
CIVIL DIVISION



BERGEN COUNTY JUSTICE CENTER
10 MAIN STREET
HACKENSACK, NEW JERSEY 07601-
7689
(201) 527-2690

January 25, 2018

Abbott S. Brown, Esq.
Lomurro, Munson, Comer, Brown & Schottland
Monmouth Executive Center
4 Paragon Way, Suite 100
Freehold, NJ 07728

RE: Ethicon Hernia Mesh Litigation

Dear Mr. Brown:

This will acknowledge receipt of your correspondence dated January 11, 2018.

As counsel are aware, the New Jersey Supreme Court has developed a specific procedure regarding the type of cases you describe. Specifically, at the earliest available opportunity, counsel are to seek to have the matters designated as Multi-County Litigation (MCL). It appears counsel acknowledge the issues at the heart of the litigation are best handled by one judge, in one county. However, that goal will not be achieved informally.

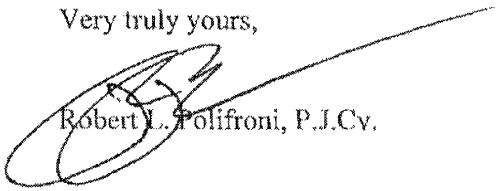
You request a "global" case management conference to discuss the consolidation of these matters for discovery or an MCL application. Respectfully, counsel's only option is the latter. Decisions by counsel to select a county of venue, and then request to have the matters consolidated and handled by one judge outside the MCL format, will not be validated by this court. Indeed, unless the individual plaintiffs live in Bergen County, it seems reasonable the most convenient venue would be the corporate location of the defendants, which appears to be outside Bergen County.

Respectfully, the court will not accommodate counsel's efforts to secure case management by one designated judge in one particular county without seeking an MCL designation in situations where such designation is clearly appropriate. There is no need to conduct a case management conference. Therefore, your request is denied. The cases will be handled by the individual judges assigned via the standard docket number system, pending any Supreme Court decision on an MCL designation.

This letter does not serve to comment on the discretion of the Assignment Judge to address issues involving venue, either via a conference or sua sponte.

Please be guided accordingly.

Very truly yours,



Robert L. Polifroni, P.J.Cv.

RLP/len

- cc: Hon. Bonnie J. Mizdol, A.J.S.C.
Hon. Estela M. De La Cruz, J.S.C.
Hon. James J. DeLuca, J.S.C.
Hon. Christine A. Farrington, J.S.C.
Hon. Rachelle L. Harz, J.S.C.
Hon. John D. O'Dwyer, J.S.C.
Hon. Gregg A. Padovano, J.S.C.
Hon. Lisa Perez Friscia, J.S.C.
Hon. Charles E. Powers, Jr., J.S.C.
Hon. Mary F. Thurber, J.S.C.
Kathleen Stylianou, Civil Division Manager
Kelly S. Crawford, Esq.
Kelsey Stokes, Esq.
Adam Evans, Esq.
Robert Price, Esq.
Michael Daly, Esq.

SUPREME COURT OF NEW JERSEY

On application made pursuant to Rule 4:38A and the Multicounty Litigation Guidelines promulgated by Directive # 08-12 in accordance with that Rule, it is hereby ORDERED that all pending and future New Jersey state court actions against Johnson & Johnson and Ethicon, Inc., alleging injuries as a result of use of Physiomesh Flexible Composite Mesh be designated as multicounty litigation ("MCL") for centralized management purposes; and

It is FURTHER ORDERED that any and all such complaints that have been filed in the various counties and that are under or are awaiting case management and/or discovery shall be transferred from the county of venue to the Superior Court, Law Division, Atlantic County and that, pursuant to N.J. Const. (1947), Art.VI, sec.2, par.3, the provisions of Rule 4:3-2 governing venue in the Superior Court are supplemented and relaxed so that all future such complaints, no matter where they might be venued, shall be filed in Atlantic County; and

It is FURTHER ORDERED that Superior Court Judge Nelson C. Johnson shall oversee management and trial issues for such cases and may, in his discretion, return such cases to the original county of venue for disposition, and

It is FURTHER ORDERED that no Mediator or Master may be appointed in this litigation without the express prior approval of the Chief Justice.

For the Court

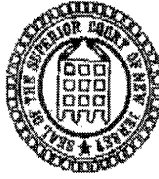


Chief Justice

Dated: July 17, 2018

SUPERIOR COURT OF NEW JERSEY

BONNIE J. MIZDOL
Assignment Judge



Bergen County Justice Center
Suite 425
Hackensack, NJ 07601-7699
T: (201) 221-0100 Ext. 25227
F: (201) 221-0596

FACSIMILE TRANSMITTAL SHEET

FROM:

HON. BONNIE J. MIZDOL, A.J.S.C.

RANDY PEARCE - LAW CLERK

LINDA LOSPALLUTO - SECRETARY

TIMOTHY GONZALEZ - LAW CLERK

TO:

FAX NUMBER:

Joshua S. Kincannon, Esq.

732-431-4043

TO:

FAX NUMBER:

David R. Kott, Esq.

973-624-7070

TO:

FAX NUMBER:

Kelly S. Crawford, Esq.

973-451-8635

TO:

FAX NUMBER:

Judge Robert Polifroni, P.J. Cv.

201-221-0645

RE:

DOCKET NUMBER:

Ethicon Hernia Mesh Litigation - Motions to Transfer Venue

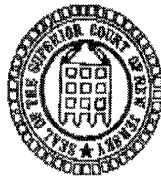
URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Please see attached.

NUMBER OF PAGES INCLUDING COVER SHEET: 3

SUPERIOR COURT OF NEW JERSEY



BONNIE J. MIZDOL
ASSIGNMENT JUDGE

BERGEN COUNTY JUSTICE CENTER
10 MAIN STREET
SUITE 425
HACKENSACK, NJ 07601-7699
(201) 221-0700 Ext. 25227
FAX (201) 221-0596

September 24, 2018

Joshua S. Kincannon, Esq.
Lomurro, Munson, Comer, Brown & Schottland, LLC
Monmouth Executive Center
4 Paragon Way, Suite 100
Freehold, New Jersey 07728

RE: Ethicon Hernia Mesh Litigation
Motions to Transfer Venue

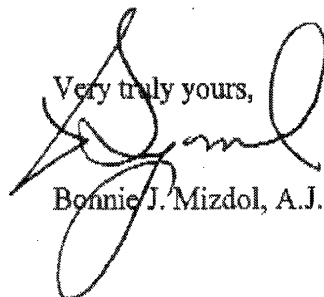
Dear Mr. Kincannon:

Receipt is acknowledged of correspondence dated September 21, 2018, from both parties regarding the motions for change of venue as well as the cross-motions for consolidation concerning two (2) docket numbers.

This letter shall serve to advise that I have entered an Order appointing Hon. Rachelle L. Harz, J.S.C., as my designee in accordance with R. 4:3-3(a) to hear the change of venue motions. A copy of the Order is enclosed. Judge Harz will hear oral argument at 10:00 a.m. on the 28th, in Courtroom 359 of the Rotunda Building.

Pursuant to R.1:6-3, plaintiffs' cross-motions to consolidate, Docket Nos. BER-L-7065-17 and BER-L-1393-18 are not procedurally proper and will not be heard on September 28, 2018. The return date and ultimate venue of the cross-motions will be addressed on the 28th.

Please be guided accordingly.

Very truly yours,

Bonnie J. Mizdol, A.J.S.C.

BJM/ll
cc: Robert L. Polifroni, P.J.Cv.
Rachelle L. Harz, J.S.C.
David R. Kott, Esq.
Kelly S. Crawford, Esq.

FILED
SEP 24 2018
BONNIE J. MIZDOL, A.J.S.C.

Prepared by the Court

MICHAEL TAVIAN

**SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY
LAW DIVISION**

DOCKET NO. BER-L-4056-18

Plaintiff(s)

vs.

CIVIL ACTION

**JOHNSON & JOHNSON and
ETHICON, INC.**

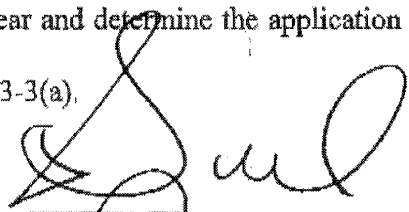
ORDER

Defendant(s)

THIS MATTER having been opened to the Court by Defendants seeking change of venue from Bergen County to Somerset County and upon notice to Plaintiffs, pursuant to R.4:3-3(a), and for good cause shown;

IT IS on this 24th day of September, 2018, **ORDERED**

1. That Hon. Rachelle Lea Harz, J.S.C., is hereby appointed designee of the Assignment Judge to hear and determine the application for change of venue in accordance with R.4:3-3(a).



Hon. Bonnie J. Mizdol, A.J.S.C.

ILENE GOLD, et al. v. JOHNSON & JOHNSON, et al. -- September 28, 2018

Sheet 1

SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY
LAW DIVISION, CIVIL PART
DOCKET NO. BER-L-8037-17
APP. DIV. NO.

ILENE GOLD, ET AL.)	
)	
Plaintiff,)	TRANSCRIPT
)	of
vs.)	MOTION
)	
JOHNSON & JOHNSON AND)	
ETHICON,)	
)	
Defendants.)	

Place: Bergen Co. Courthouse
10 Main Street
Hackensack, NJ 07601

Date: September 28, 2018

BEFORE:

HONORABLE RACHELLE LEA HARZ, J.S.C.

TRANSCRIPT ORDERED BY:

DAVID R. KOTT, ESQ. (McCarter & English, LLP., 100
Mulberry Street, Four Gateway Center, PO Box
652, Newark, New Jersey 07102)

Transcriber Brandy Winow
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Operator, _____

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ILENE GOLD, et al. v. JOHNSON & JOHNSON, et al. -- September 28, 2018

Sheet 2

APPEARANCES:

JOSHUA S. KINCANNON, ESQ. (Lomurro, Munson, Comer,
Brown, & Schottland, LLC.)
Attorney for the Plaintiff

JAMES BARRY, ESQ. (Locks Law Firm)
Attorney for the Defendant

DAVID R. KOTT, ESQ. (McCarter English, LLP.)
Attorney for the Defendants

KELLY CRAWFORD, ESQ. (Riker, Danzig, Scherer,
Hyland, & Perretti LLP.)
Attorney for the Defendants

KELSEY L STOKES, ESQ. (Fleming, Nolen, & Jez, LLP.)
Attorney for the Defendants

ADAM EVANS, ESQ. (Hollis Law Firm)
Attorney for the Defendants

JEAN P. PATTERSON, ESQ. (McCarter English, LLP.)
Attorney for the Defendants

CHRISTOPHER A. ROJAO, ESQ. (McCarter English, LLP.)
Attorney for the Defendants

I N D E X

3

	Page
RE: MOTION	4
ARGUMENT	
By Mr. Kincannon	7, 20
By Mr. Kott	15
THE COURT	
Motion Granted	26

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ILENE GOLD, et al. v. JOHNSON & JOHNSON, et al. -- September 28, 2018

Sheet 3

4

GOLD VS. ETHICON

1 THE COURT: This is BER-L-8037-17, we just
2 have it under, HERNIA MESH VS. ETHICON AND JOHNSON &
3 JOHNSON. Fair statement, that's how the caption should
4 read right now?

5 MR. KINCANNON: The caption -- I think we
6 filed -- well, there are -- there are 109 of these
7 motions.

8 THE COURT: Right.

9 MR. KINCANNON: The first one filed was
10 COTTLE (phonetic).

11 THE COURT: Uh-huh.

12 MR. KINCANNON: That's the first filed case.
13 So, that's what we had done and look to file our
14 omnibus objection under. We ended up filing it under
15 all of them. So, I know it's --

16 THE COURT: Okay. But for purposes of today
17 we'll use Docket Number 8037-17, but every one
18 understands what it encompasses.

19 MR. KINCANNON: Perfect. Thank you, Your
20 Honor.

21 THE COURT: Okay. Thank you. So, let's have
22 appearances by plaintiff's counsel.

23 MR. KINCANNON: Good morning, Your Honor.
24 I'm Josh Kincannon from the Lomurro law firm.

25 MR. BARRY: James Barry, Your Honor, from the

5

GOLD VS. ETHICON

1 Locks law firm.

2 MR. KOTT: David Kott, K-O-T-T, from McCarter
3 and English, LLP.

4 MS. CRAWFORD: Kelly Crawford, Riker, Danzig,
5 Scherer, Hyland, and Perretti also for the defendant.

6 THE COURT: Thank you. Does anyone else here
7 wish to put their appearances on the record?

8 MS. STOKES: Yes, Your Honor. My name is
9 Kelsey Stokes from Fleming, Nolen, and Jez out of
10 Houston.

11 MR. EVANS: Adam Evans from the Hollis law
12 firm out in Prairie Village, Kansas.

13 THE COURT: From where?

14 MR. EVANS: Prairie Village, Kansas.

15 THE COURT: Wow. How did you get here? It
16 was a long way.

17 MR. EVANS: United.

18 MS. PATERSON: Good morning, Your Honor.
19 Jean Patterson from McCarter English.

20 THE COURT: Hi. How are you?

21 MR. ROJAO: Good morning Your Honor. Chris
22 Rojao from McCarter and English.

23 THE COURT: Thank you. Anyone else? I have
24 read all the papers and I've -- I've thoroughly read
25 them and thought about this issue. I think it's

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(973) 283-0196 FAX (973) 492-2927

GOLD VS. ETHICON

1 important to state that I am acting today as Judge
2 Mizdol's -- Mizdol's designee.
3 Judge Mizdol signed an order on September
4 24th, 2018 indicating this matter having been open to
5 the court by defendant seeking change of venue from
6 Bergen County to Somerset County. And upon notice to
7 plaintiffs pursuant to Rule 4:3-3(a) and for good cause
8 shown it's on this 24th day of September, 2018 order
9 the Honorable Rachelle Lea Harz, J.S.C. is hereby
10 appointed designee of the assignment judge to hear and
11 determine the application for change of venue in
12 accordance with Rule 4:3-3(a) signed by the Honorable
13 Bonnie J. Mizdol assignment judge of the Superior Court
14 here in Bergen County.
15 So, I sit here with unique (Indiscernible)
16 privileged rare opportunity to hear a motion to change
17 venue as the assignment judge.
18 Before we start oral argument, and I
19 recognize it's the motion of defense counsel, can I
20 just ask plaintiff's counsel, after having read all
21 your papers, it would appear as though your position is
22 that any county in New Jersey would be appropriate.
23 Because based upon your understanding of the law and
24 the court rules since Ethicon does business, according
25 to your definition of doing business, in every county

GOLD VS. ETHICON

1 then you could file these cases in Cape May. You could
2 file it any county in New Jersey. If I understand the
3 premise of your argument.
4 MR. KINCANNON: Yes. Your Honor, looking at
5 the venue rule on the rule about where they're actually
6 conducting business if we look at that and look at
7 these defendants and try and analyze whether they're
8 actually doing business in any of these counties
9 sufficient to satisfy that -- that phrase in the venue
10 rule, I think it's manifest that they are.
11 And I think we can touch on the policy of
12 that, right, the reason that it says that you have to
13 actually being doing business there is so that the
14 defendant has some reasonable foreseeability that if
15 they make those contacts with that venue that it's
16 foreseeable that they may be hailed into court there.
17 THE COURT: Isn't that a jurisdictional
18 argument that you just made?
19 MR. KINCANNON: Well, --
20 THE COURT: You know, hailing into court,
21 contacts, that -- that's -- that's a jurisdictional
22 motion.
23 MR. KINCANNON: But generally speaking with
24 regard to the phrase, actually doing business there,
25 cases cited by defendant, CREPY, BUCKLU (phonetic), and

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GOLD VS. ETHICON

1 others, describe the reason behind saying, actually
2 doing business there, as opposed to just principle
3 place of business. And that's because if they are
4 doing business there, it's reasonable to expect that
5 they may be hailed into the court there.
6 So, for venue purposes we laid venue here
7 because these are giant companies that do business
8 throughout the State of New Jersey. Venue is proper
9 here. This is a Fortune 500 company with 250
10 subsidiaries. They sell products all over the world,
11 all over the country, all over the State, and in Bergen
12 County. Ethicon sells 440 different medical devices.
13 They sell them in New Jersey. They sell them in Bergen
14 County. Bergen County is the most populist county in
15 the State. We have the largest hospital in the State
16 here.
17 Johnson & Johnson makes band-aids and
18 Tylenol. There's no -- if you look at their papers,
19 nowhere in their papers does the following sentence
20 exist, Johnson & Johnson and Ethicon do not do business
21 in Bergen County.
22 THE COURT: But they conceded that.
23 MR. KINCANNON: So, if they're doing business
24 here, then venue is proper here.
25 THE COURT: But so, an answer to my question

GOLD VS. ETHICON

1 venue could be proper anywhere in the State of New
2 Jersey.
3 MR. KINCANNON: I would think so. Yes, Your
4 Honor.
5 THE COURT: So, -- okay. So, then you chose
6 Bergen County, and I thank you for the compliment, you
7 -- you indicated in your papers that I had handled
8 pelvic mesh and you thought that I personally had
9 familiarity with the product and, therefore, it seemed
10 like a good fit.
11 MR. KINCANNON: Well, Your Honor, correct.
12 We get to pick -- the State -- we pick -- well, the
13 court picks the State really. The defendant's location
14 where we can sue or we could sue in federal court as a
15 one-off in plaintiff's home jurisdiction.
16 If we look at that, I think it answers your
17 question in part. If we bring -- if a one-off case in
18 a federal court, we're now forced with litigating this
19 entire thing along and educating a judiciary that
20 probably has no experience with polypropylene pelvic
21 mesh --
22 THE COURT: You lost me on that. Why would
23 you just bring one case in federal court?
24 MR. KINCANNON: Well, I'm saying we have
25 plaintiffs from out-of-state. So, those plaintiffs

GOLD VS. ETHICON

1 they have two choices.

2 THE COURT: Oh, oh, so --

3 MR. KINCANNON: You can file in defendant's
4 backyard here in New Jersey or we could file in federal
5 court, but federal court really is not practically
6 availing. And especially in light of what's really the
7 elephant --

8 THE COURT: Ok-- okay. I understand now.

9 Okay. Because there's no MDL for these products.

10 MR. KINCANNON: That's correct.

11 THE COURT: Okay.

12 MR. KINCANNON: And so, I think we would be
13 remiss to ignore the fact that this Court has handled
14 polypropylene pelvic mesh cases against these same
15 defendants for years. It's a different product, but
16 there is substantial overlap. This is extruded woven
17 polyethylene mesh that is put into the abdomen, that's
18 what this mesh is.

19 We would be remiss as attorneys if we did not
20 consider the fact that this Court and Your Honor is
21 probably one of the top five courts in the entire world
22 in terms of the knowledge of polypropylene pelvic mesh
23 and these two defendants.

24 So, bringing it here in Bergen recognizes the
25 tremendous convenience and efficiencies that will be

GOLD VS. ETHICON

1 achieved by being here.

2 THE COURT: But that same argument was
3 rejected by Judge Grant and he gave physiomesh to
4 Atlantic. I mean, I understand what you are saying,
5 but that's not how venue is picked or how selection of
6 counties are picked. I mean, that, in essence, is
7 almost like judge shopping.

8 Because -- well, let's look at a perfect
9 example Judge Higby (phonetic) at pelvic mesh in
10 Atlantic County, right, and she was extraordinarily
11 knowledgeable about pelvic mesh. She was elevated to
12 Appellate Division and then all those cases came Judge
13 Martinotti who nothing about pelvic mesh. And then he
14 had it for two years and then he went to the federal
15 court and then I took over the docket and at the time I
16 knew nothing about pelvic mesh.

17 So, while I understand you're indicating the
18 Court has this knowledge that is not a factor in
19 determining where cases go because where judges go is a
20 moving element and there's no guarantee that a judge
21 won't be transferred to a different county, or have a
22 different assignment, or retire for that matter, or go
23 to the Appellate Division, or go to federal court.

24 So, while that's an understandable idea in
25 practicality it doesn't work that way, but that's not

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GOLD VS. ETHICON

1 how cases are assigned or designated. That's not how
2 venue is chosen or how it -- an MCL assignment is
3 chosen.

4 MR. KINCANNON: I understand. And I agree
5 Your Honor, but I believe that if they do business, as
6 -- as we've talked about earlier, in every county in
7 New Jersey, then plaintiff is permitted to choose and
8 plaintiff is permitted some modicum of deference in
9 their choice and if we agree that they can be brought
10 in any county, this was plaintiff's choice. And so,
11 they do business here, venue is proper, there is no
12 viable argument of inconvenience.

13 Let's look at the other alternative, right,
14 they would have you send this to Somerset. That's
15 forum shopping, Your Honor. That would be sending us
16 to a court that would -- it would create a substantial
17 amount of delay. And the convenience that they allude
18 to it's really kind of a red herring.

19 They talk about documents and witnesses being
20 available there, but as a practical matter that's not
21 how this plays out. No witnesses will be produced at
22 the offices of Ethicon for plaintiff's counsel to
23 depose. Depositions have been taken in the Ethicon
24 hernia mesh litigation in the MDL the same witnesses
25 we'll seek to depose. None of those depositions

GOLD VS. ETHICON

1 occurred in Somerset County.

2 THE COURT: Are you involved in the MDL?

3 MR. KINCANNON: I am not involved in the MDL.
4 We have a cases -- I lost my train of thought.

5 THE COURT: I'm sorry.

6 MR. KINCANNON: That's okay. About Somerset
7 County --

8 THE COURT: You were talking about the
9 convenience.

10 MR. KINCANNON: Oh, --

11 THE COURT: The convenience factors.

12 MR. KINCANNON: -- the convenience, right.

13 So, the convenience of the parties and the delay that
14 would be inherent in the transfer of this that is a --
15 it's a judiciary that is not as sizeable or as used to
16 complex administration as -- as this Court is. And --
17 and this Court has been able to resolve and move
18 dockets along.

19 These are all things that we may consider,
20 but the bottom line is that venue is proper here. And
21 the alternative sending it to Somerset County, that's --
22 -- where they would have it, that's defendant's
23 backyard. They've got 2,400 employees there. They've
24 got untold thousands of people that tangentially derive
25 a benefit from those defendants and those employees in

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1 that county.

2 So, if venue --

3 THE COURT: So, you're concerned about the
4 resources of -- of a particular county.

5 MR. KINCANNON: And -- and I'm concerned
6 about the jury pool. And if venue is proper here and
7 there's a court here that -- and defendants are
8 presents litigating thousands of polypropylene pelvic
9 mesh cases in this court currently, it just seems to us
10 that it would be -- we wouldn't be doing our jobs if we
11 didn't recognize that there is overlap with experts,
12 with the discovery, with the protective order we're
13 negotiating I'm working off the TBM protective order
14 draft.

15 All of these things that have already been,
16 in some cases, litigated before Your Honor and -- and
17 we know defendants can live with them because they're
18 moving forward under those orders. And we've -- are
19 looking to see if we can live with them too. We can
20 move this litigation very expeditiously because so much
21 of the work has been done here already.

22 To reinvent that wheel is simply unnecessary
23 because venue is proper here. And there's no real
24 showing of inconvenience on the part of defendants.

25 THE COURT: Why don't I hear from the moving

GOLD VS. ETHICON

1 party.

2 MR. KINCANNON: Thank you, Your Honor.

3 THE COURT: (Indiscernible).

4 MR. KOTT: Thank you, Your Honor. This our
5 motion to transfer venue from Bergen to Somerset
6 County. And I think there are three issues before the
7 Court. The first issue, which I'll address first, is
8 whether for the convenience of the parties venue should
9 be transferred.

10 Here is what's in the record on that. And
11 what I'm going to now give comes from the complaints
12 filed by the plaintiffs.

13 None of the plaintiffs reside in Bergen
14 County. Of the 109 motions that are pending 107 live
15 in some other State. One plaintiff lives in Essex, one
16 plaintiff lives in Monmouth. So, that's where the
17 plaintiffs are from.

18 None of the events giving rise to the
19 litigation occurred in Bergen County. There are no
20 witnesses in Bergen County, there's no evidence in
21 Bergen County. Plaintiffs acknowledge in the complaint
22 that Ethicon is located in Somerset County and that the
23 other defendant Johnson & Johnson is located in
24 Middlesex County.

25 I recognize that the Court gives deference to

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GOLD VS. ETHICON

1 the plaintiff's choice. However, the Appellate
2 Division has said as has the Supreme Court that when
3 the plaintiffs are not from the county of venue, their
4 choice of venue is entitled to less deference. And
5 that's what the Supreme Court has said.

6 Plaintiffs in their papers rely on two cases.
7 One is DI DONATO (phonetic), that's an Appellate
8 Division decision where the Appellate Division actually
9 granted leave to appeal on a motion to transfer venue.
10 In DI DONATO the plaintiff was rendered a quadriplegic.
11 He lived in Middlesex County.

12 THE COURT: He couldn't travel.

13 MR. KOTT: He couldn't travel.

14 THE COURT: I read that.

15 MR. KOTT: His -- his eyewitnesses --

16 eyewitnesses to the accident were from Bergen County.
17 And the Court did all of the measuring and sent the
18 Middlesex County quadriplegic to Camden County.

19 The other case the plaintiffs relies is
20 OTINGER (phonetic), which is a decision of Judge Doin
21 (phonetic), on a motion like this motion to transfer
22 from Bergen to Somerset County. The defendants were in
23 Somerset County. Judge Doin --

24 THE COURT: They were government officials.

25 MR. KOTT: They were. However, both in DI

GOLD VS. ETHICON

1 DONATO and OTINGER the Court said that ordinarily and
2 the Court will require is the venue be where the
3 governmental agency is, but nevertheless we're going to
4 go through the analysis of where it's convenient to be
5 because we can choose to not follow that aspect of the
6 court rule. So, both in DI DONATO and in OTINGER the
7 Court went through the analysis and Judge Doin
8 concluded that because the defendants were in Somerset
9 the case should be litigated in Somerset.

10 Here is what the plaintiffs say. The
11 plaintiffs say that it would be convenient to litigate
12 here because it's close to major airports, because it's
13 within the driving distance of both Ethicon and
14 Somerset and J&J in Middlesex, and because Your Honor
15 had the pelvic mesh MCL.

16 Ordinarily you decide a case and then it goes
17 to the Appellate court and you get affirmed or
18 reversed. This is unique, you already have the Supreme
19 Court telling you what to do on this. And what I mean
20 by that is those three arguments were exact arguments
21 the plaintiffs made in their MCL designation under
22 physiomes MCL, close to the airports, driving distance
23 to Somerset and Middlesex, we have a judge here who has
24 extensive experience with mesh products and Ethicon.
25 And the Supreme Court said, we're not going to assign

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GOLD VS. ETHICON

1 the cases to Bergen County.

2 The plaintiffs also do not address in their
3 papers Judge Polifroni's January 25th, 2018 letter in
4 which he noted that in his words, "the most convenient"
5 venue for this -- these lawsuits is where the corporate
6 defendants have their principle offices. And then he
7 said, which is not in Bergen County. So, this Court
8 should grant the motion to transfer to a more
9 convenient venue.

10 Second issue, is venue proper? That's what
11 the Court addressed to Mr. Kincannon in the opening
12 colloquy. Court rule says plaintiffs can sue wherever
13 somebody resides. Court rule says the corporate
14 resides wherever it is, "actually doing business".

15 And we have the CREPY decision, and I may be
16 mispronouncing it. But in CREPY the Court had a
17 situation similar to this. Defendant is from Morris
18 County, plaintiff sues in Essex County. The defendant
19 actually has 332 sales calls in Essex County. The
20 defendant actually has sales in Essex County. The
21 defendant actually has advertising and marketing which
22 enters Essex County. All of which Mr. Kincannon just
23 said why we do business. And even accepting all of
24 that as the CREPY court did, the CREPY court said
25 that's not enough to impose venue.

GOLD VS. ETHICON

1 I'm not sure that Your Honor needs to reach
2 whether venue is proper because Your Honor can choose
3 to transfer venue based on the inconvenience of venue
4 and then not reach that issue. However, if Your Honor
5 reaches it, CREPY is directly on point and venue is not
6 proper here.

7 Finally, and I'm going to slow down a little,
8 there's a --

9 THE COURT: No, I'm following. I'm good.

10 MR. KOTT: Well, no, because we're getting to
11 something that's sensitive, the waiver argument. And
12 I'll spend time on that. But let --

13 THE COURT: I don't think it's really
14 necessary. I don't think you -- I mean, are you really
15 pushing that? I mean, I'm aware of the time line of
16 what occurred. I'm aware of Judge Polifroni's letter
17 in January. I have -- I have it right here. I mean,
18 they're on notice at that point. Counsel had
19 conversations you thereafter have your consent order.

20 But regardless of anything you still kept
21 filing in Bergen County. I mean, you're trying to
22 argue that there's waiver for the nu-- for the cases
23 prior to the consent order. I mean, in light of Judge
24 Polifroni's order you knew January 25th, 2018 that
25 venue wasn't guaranteed here.

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GOLD VS. ETHICON

1 MR. KINCANNON: I understand that Judge
2 Polifroni wrote that in what I would consider kind --
3 that's not an order, that's not opinion, and it's not --
4 - he's not basing it on any briefing or argument we've
5 made to try and support Bergen County. That's -- we
6 had asked him, how should we do this? Would you like
7 us to consolidate, should we do an MCL? We wrote the
8 letter saying, how would you like us to proceed and
9 that was his response.
10 In terms of the ten-day waiver just as point
11 of clarification. I didn't bring it up in my initial
12 thing. I don't think that's where we're going to end
13 up hanging our hat on this issue. But the fact of the
14 matter is the venue rules say that if you want to
15 transfer venue and object to plaintiff's pick, you have
16 ten days do it after you answer. They didn't do that.
17 Not once, not twice, they didn't do it 57 times they
18 didn't do it, Your Honor.
19 And then after the fact then they came to us
20 and said, hey, we're going to file motions for venue.
21 And we said, well, these have all expired. And they
22 said, well, there are newer ones that you've just filed
23 that haven't expired yet. So, instead of us filing all
24 of these motions to venue let's just enter into a
25 consent order then we'll do the venue after the MCL.

GOLD VS. ETHICON

1 And we agreed so that we wouldn't burden the Court with
2 venue motions that might be moot.
3 THE COURT: But the -- if these cases are
4 going to be moved as the acting assignment judge for
5 this motion, I'm certainly not going to carve out the
6 57 cases you're referring to and then the remaining
7 cases having to do with hernia mesh other than
8 physiomesh go elsewhere. I mean, that's -- that's
9 really impractical.
10 MR. KINCANNON: I agree and I -- I think that
11 -- that's just another reason why the cases should stay
12 in Bergen. Because under the rules 57 of these cases
13 are not this -- this motion is not timely for them.
14 And the word in the rule is, waived. They have waived
15 the right to bring this motion in 57 of these cases.
16 THE COURT: But you're assuming that the
17 presiding judge here and Judge Mizdol didn't notice
18 that you filed the number that you filed involving
19 these products here in Bergen County with no nexus to
20 Bergen County. I mean, you're assuming that.
21 MR. KINCANNON: I'm not sure I understand --
22 what I'm doing is fi--
23 THE COURT: I mean, they at any time can sua
24 -- Judge Mizdol sua sponte. And that is not related to
25 this. Our assignment judge has had to do that where

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GOLD VS. ETHICON

1 plaintiff's counsel just filed cases in Bergen County
2 and there's no nexus to Bergen County. And sua sponte
3 --

4 MR. KINCANNON: Sure.

5 THE COURT: -- she has the power, makes the
6 decision to transfer to the appropriate venue. So,
7 you're -- you're argument has the premise that that
8 would never have occurred. I mean, it was noticed that
9 all these cases were being filed here by my
10 (Indiscernible).

11 MR. KINCANNON: Right, but at that time many
12 of their cases and the timeliness of their objection
13 had already expired.

14 THE COURT: I understand that, but what I'm
15 saying is --

16 MR. KINCANNON: Oh.

17 THE COURT: -- putting that aside you're
18 argument assumes that Judge Mizdol would never have
19 said, this venue isn't appropriate I'm not keeping
20 these cases here in Bergen County.

21 MR. KINCANNON: I understand, Your Honor.

22 THE COURT: Right.

23 MR. KINCANNON: But our argument would be the
24 same as it was at the beginning here, which is that if
25 we were allowed to present our case to Judge Mizdol,

GOLD VS. ETHICON

1 venue is proper and it's not inconvenient to the
2 parties to litigate here.

3 That's the key here, venue is proper. When
4 we say things like, no nexus to Bergen County --

5 THE COURT: There is no nexus to Bergen
6 County. What's the nexus?

7 MR. KINCANNON: They do business here and
8 that's the rule.

9 THE COURT: Well, the cases have no nexus
10 here. None -- none of the plaintiffs are from Bergen
11 County.

12 MR. KINCANNON: But the cases --

13 THE COURT: The implanting was not done here.
14 The treatment was not done here. I mean, that's --
15 that's the nexus for the case.

16 MR. KINCANNON: But those -- but what the
17 rule says is that if they're doing business here, we
18 can get venue here.

19 THE COURT: Oh, I understand that --

20 MR. KINCANNON: And -- and -- I'm sorry, I
21 just wanted to clarify that the exact thing that we're
22 suing for is what they're doing business for. If you
23 want to distinguish CREPY, CREPY was a wrongful
24 termination case where he brought suit in a different
25 venue and that venue had no connection at all to his

GOLD VS. ETHICON

1 wrongful termination case.

2 This venue is connected because they derive
3 substantial revenue out of Bergen County. So, they are
4 doing business here. Our claims are with regard to
5 the business that they are doing here.

6 THE COURT: No, in CREPY there was doing
7 business in that other county.

8 MR. KINCANNON: But not related to his
9 wrongful termination claim. His claim, his tort was a
10 unicorn compared to their connections to the venue.
11 Here our --

12 THE COURT: That's what I'm saying, there's
13 no nexus. You're claim has no nexus to Bergen County.
14 The implantation, the damage, the injury didn't occur
15 here in Bergen.

16 MR. KINCANNON: We agree that the damage and
17 injuries did not occur here.

18 THE COURT: Right.

19 MR. KINCANNON: But -- but really our
20 analysis is, are they doing business here? That's the
21 rule, that's the analysis and they've conceded they're
22 doing business here.

23 So, if we concede that that venue is proper
24 laid in Bergen County by virtue of 432 and defendants
25 doing business here, then we're talking about the

GOLD VS. ETHICON

1 convenience issue and -- and, you know, we still have
2 those 57 cases where they're not even supposed to be
3 able to bring this motion.

4 So, to your point, look, I'm not going to
5 bifurcate these (Indiscernible) send half of them to
6 Somerset and say 57 have to leave here.

7 THE COURT: That -- that definitely I --

8 MR. KINCANNON: I wouldn't ask you that. I
9 would argue it the other way that that means that these
10 cases should stay here for all of those reasons. 57 of
11 them can't go anywhere because the rule says they can't
12 bring this motion.

13 And the others there has been no showing of
14 inconvenience, no real showing of inconvenience. They
15 can talk about 12 miles versus 8 miles, but as a
16 practical matter we're going to get documents and hard
17 drives in the mail. We're going to take depositions
18 outside of Somerset County. There is no burden on
19 anyone going to Somerset County except plaintiffs.

20 Now, if we go to Bergen, there's no palpable
21 prejudice to these defendants. If anything, their
22 cases will move faster. This will be more expeditious.

23 THE COURT: All right. Mr. Kott, would you
24 wish to add anything?

25 MR. KOTT: Unless the Court has questions for

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GOLD VS. ETHICON

1 me, no, Your Honor.

2 THE COURT: Okay. I want you to know I've
3 given a lot of thought to this motion. And I have read
4 the papers. I have read all the -- the cases actually
5 that you have cited and the exhibits.

6 As you will see as my decision is put on the
7 record I am granting the application, but I am granting
8 the application in part because as the assignment judge
9 making the decision of this motion and given the
10 concerns that plaintiffs raise of resources and
11 staffing the appropriate venue is going to be
12 Middlesex. Because Middlesex certainly has the
13 staffing and resources and actually quite obviates a
14 lot of the concerns that plaintiffs set forth in their
15 papers regarding Somerset. But I'll put every thing on
16 the record now.

17 I've already placed on the record the fact
18 that Judge Mizdol has by order dated September 24, 2018
19 appointed this court to hear and determine the
20 application for change of venue is a matter presently
21 before us.

22 Before this Court motions to change venue by
23 the defendants from Bergen County to Somerset County
24 regarding 109 cases has been fully briefed and we've
25 had oral argument. Although this only involves 109

GOLD VS. ETHICON

1 cases this decision pertains to all cases filed by the
2 plaintiffs against the defendants pertaining to
3 personal injury product liability claims concerning
4 hernia mesh other than physiomesh. And
5 parenthetically, clearly, physiomesh products are all
6 being heard in Atlantic County as an MCL.

7 As -- as -- as background it is necessary to
8 the put the following on the record. Plaintiffs,
9 except for two, reside outside the State of New Jersey.
10 None live in Bergen County.

11 The complaints allege that plaintiffs were
12 injured as a result of an Ethicon hernia mesh product
13 that was implanted after plaintiffs underwent hernia
14 repair surgery. Plaintiffs sued defendants Ethicon and
15 Johnson & Johnson in Bergen County alleging that they
16 were involved in the manufacture, design, and/or
17 distribution of the product that allegedly caused
18 injury to the plaintiff.

19 Neither the hernia repair surgery nor the
20 alleged injury occurred in Bergen County. Plaintiffs
21 do not reside in Bergen County. The manufacturer of
22 the product, Ethicon, is not located in Bergen County.
23 Ethicon is located in Somerset County. The other
24 defendant in this action, Johnson & Johnson, is located
25 in Middlesex County.

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GOLD VS. ETHICON

1 On January 11, 2018 counsel representing
2 plaintiffs in product liability cases involving hernia
3 mesh products against Ethicon and Johnson & Johnson
4 together with many other plaintiffs' law firms wrote to
5 the Honorable Robert L. Polifroni to request an early
6 case management conference to discuss to consolidate
7 the cases for discovery or an MCL application.

8 By letter dated January 25, 2018 Judge
9 Polifroni rejected plaintiff's informal attempt to
10 achieve MCL designation in Bergen County and reminded
11 plaintiff's counsel of the New Jersey MCL application
12 process. In this letter Judge Polifroni explained that
13 decisions by counsel to select a county of venue and
14 then request to have the matters consolidated and
15 handled by one judge outside the MCL format will not be
16 validated by this Court.

17 Judge Polifroni also noted that unless the
18 individual plaintiffs live in Bergen County it seems
19 unreasonable -- excuse me. It seems reasonable that
20 the most convenient venue would be the corporate
21 location of the defendants, which appears to be outside
22 of Bergen County.

23 Regardless of this letter plaintiff's counsel
24 continued to file hernia mesh lawsuits against
25 defendants in Bergen County even though Bergen County

GOLD VS. ETHICON

1 has no nexus to the parties or their suit's
2 allegations.

3 On February 28th, 2018 plaintiff's counsel
4 filed a Rule 4:38(a) MCL application with the AOC. The
5 AOC issued a notice requesting comments or objections
6 to plaintiff's counsel's MCL application by May 14,
7 2018. Defendants responded to plaintiff's MCL
8 application.

9 While the application was pending the parties
10 did enter into the consent order extending time for
11 defendants to file motions to transfer venue in all
12 Bergen County Ethicon hernia mesh cases. The consent
13 order extended the time for defendants to file said
14 motions for change of venue until 30 days after the AOC
15 issued its ruling on the MCL application.

16 On August 15, 2018 the Honorable Glen Grant
17 (phonetic) issued a another notice to the bar advising
18 that the Supreme Court determined to designate cases
19 involving allegations from use of physiomesh flexible
20 composite mesh as multi-county litigation and rejected
21 plaintiff's request for MCL litigation for hernia mesh
22 cases that did not involve physiomesh. Defendants now
23 file this motion here in Bergen to transfer venue from
24 Bergen to Somerset.

25 Pursuant to Rule 4:3-3(a)(1) the Court may

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GOLD VS. ETHICON

1 also order a change of venue if the venue is not laid
2 in accordance with Rule 4:3-2. That rule provides in
3 pertinent part, that venue is properly laid in the
4 county in which the cause of action arose or in which a
5 party to the action resides at the time of its
6 commencement. That's Rule 4:3-2(a)(3).

7 For purposes of venue a corporation is deemed
8 to reside in the county in which it is registered
9 office is located, or in any county in which it is
10 actually doing business.

11 In CREPY VS. RECKITT, R-E-C-K-I-T-T,
12 BENCKISER, B-E-N-C-K-I-S-E-R, LLC., 448 NJ Super 419
13 it's a reported Law Division case of 2016, the trial
14 court concluded that the term actually doing business
15 requires a level of business activity by a corporate
16 defendant in the county of venue that exceeds merely
17 conducting incidental or minimal business such as
18 ordinary advertising or marketing.

19 The Court noted that the plaintiff failed to
20 show how the defendant business activities were
21 specifically targeted toward Essex County in ruling
22 that the action should be transferred to Morris County
23 where the defendant's New Jersey office was located.
24 The Court required more than general business activity
25 to be performed in the form venue even though the

GOLD VS. ETHICON

1 defendant derived venue from that activity.

2 After CREPY a subcommittee of the New Jersey
3 Supreme Court Rules Committee drafted a proposed
4 amendment to Rule 4:3-2 which the committee stated was
5 a clarification of the rule -- venue rule consistent
6 with CREPY.

7 The proposed amendment read, B, business
8 entity. For purposes of this rule a business entity
9 shall be deemed to reside in the county in which its
10 principle office in New Jersey is located or if it has
11 no office in the New Jersey in the county in which it
12 was the most significant contacts.

13 This proposed rule embraced the rationale set
14 forth in CREPY and the intended meaning of, actually
15 doing business, found in the New Jersey court rules.

16 This Court notes the Supreme Court Rules
17 Committee did not adopt a rule change, but decided to
18 let case law develop to provide guidance on the issue.
19 That is exactly what this Court is doing now in
20 adjudicating this motion in accordance with the
21 principles articulated in CREPY and with the proposed
22 amendment.

23 When a motion to change venue is made under
24 Rule 4:3-3(a)(1) for improper venue, the respondent
25 which is here the plaintiff, has the burden of

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GOLD VS. ETHICON

1 demonstrating good cause for not making the change.
2 This is set forth in our current New Jersey court
3 rules, PRESSLER (phonetic) and VENERO (phonetic), Rule
4 4:3-3 2018 edition.

5 The court rules instruct that motions for
6 change of venue on the ground that venue was not
7 properly laid should be routinely granted unless the
8 party resisting the change makes a showing that a fair
9 and impartial trial could not be had in the proper
10 county or that the convenience of the parties and
11 witnesses and the interest of justice justifies trial
12 in a county other than the one where venue should have
13 been laid.

14 Therefore, here defendants challenge improper
15 venue based on a failure to follow Rule 4:3-2 and
16 plaintiffs have the burden to demonstrate good cause to
17 resist transfer to the venue designated by defendants.

18 Plaintiff has failed to establish that venue
19 is proper in Bergen County. Ethicon headquarters are
20 in Somerville, Somerset County. That is where the ma--
21 that is where the majority of Ethicon's activities and
22 New Jersey business is conducted and where Ethicon's
23 business activities are targeted in this State.
24 Likewise Johnson & Johnson's principle New Jersey
25 office is in Middlesex County which is where the

GOLD VS. ETHICON

1 majority of its business is conducted in this State.

2 Accordingly, pursuant to Rul 4:3-2, and the
3 principles articulated in CREPY, as well as the
4 proposed amendment clarifying the rule consistent with
5 CREPY venue is not properly laid in Bergen County.

6 This Court finds plaintiff cannot claim any
7 prejudice due to any perceived delay. The -- an
8 assignment judge or his or her designee, which is this
9 Court, may order the change of venue pursuant to Rule
10 4:3-3(a)(1) or (a)(3) sua sponte if the judge finds
11 that the conditions for transfer are satisfied.

12 This Court rejects waiver arguments raised by
13 the plaintiff as this Court finds that the conditions
14 for (Indiscernible) this action have been met.

15 As Judge Polifroni stated in his January 25,
16 2018 letter, this letter does not serve to comment on
17 the discretion of the assignment judge to address
18 issues involving venue via conference or sua sponte.
19 Also courts may relax the strict deadlines in the
20 interest of justice pursuant to Rule 1:1-2.

21 In addition, plaintiff's opposition fails to
22 set forth any legitimate prejudice plaintiff may suffer
23 as a result of any perceived delay in filing the motion
24 to transfer venue on the 54 or 57 cases.

25 Plaintiff's arguments that plaintiff would

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GOLD VS. ETHICON

1 somehow suffer prejudice if this action is transferred
2 to Somerset are rejected by this Court. Plaintiff
3 asserts that plaintiff filed the action in Bergen
4 County due to its experience in managing a large volume
5 of cases involving other mesh products and that if
6 plaintiff knew a transfer of venue was possible, the
7 other plaintiffs would not have continued to file their
8 cases in Bergen County.

9 Plaintiff's arguments seeking out this Court
10 amounts to an admission of form shopping that courts
11 should discourage. Plaintiffs raise identical
12 arguments before the AOC and the New Jersey Supreme
13 Court in their MCL application, which was rejected by
14 the Supreme Court.

15 Specifically, plaintiff's counsel argued that
16 there should be an MCL established for all hernia mesh
17 products manufactured by Ethicon before this Court here
18 in Bergen County due to my substantial relevant
19 knowledge in handling the current and prior pelvic mesh
20 cases.

21 The Supreme Court did not establish an MCL in
22 Bergen County before this Court and created an MCL only
23 for the cases involving physiomesh before Judge Johnson
24 (phonetic) in Atlantic County and to prove my point now
25 it is before Judge Porto (phonetic).

GOLD VS. ETHICON

1 Plaintiffs certainly were aware of potential
2 for venue to be transferred. Plaintiff and plaintiff's
3 counsel were on notice of potential venue transfer as
4 early as January 2018 when Judge Polifroni explicitly
5 expressed that unless an individual lives in Bergen
6 County the most convenient venue would be the corporate
7 location of the defendants, which is Somerset County
8 and Middlesex County.

9 Nevertheless, plaintiff's attorneys continued
10 to file complaints in Bergen County. Plaintiff's
11 arguments regarding waiver and/or prejudice are not
12 compelling because actions continued to be filed here
13 in Bergen after the July 12th, 2018 consent order was
14 entered. Plaintiffs have continued to file cases in
15 Bergen County after defendants filed their first motion
16 to transfer venue.

17 Accordingly, plaintiff's argument that if
18 plaintiff's knew about the potential for these cases to
19 be transferred to Somerset County, I guess any other
20 county, many of the plaintiffs subject to this motion
21 may never have pursued this case in New Jersey is
22 rejected by this Court.

23 I have the rare opportunity to handle motions
24 such as this for change of venue as Judge Mizdol's
25 designees, but like an assignment judge matters of

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GOLD VS. ETHICON

1 judicial economy and efficiency must be considered in
2 all decision, including venue decisions.

3 As noted in plaintiff's opposition there are
4 only three civil judges in Somerset County. The
5 concern is the resources available and Somerset County
6 to suddenly have over 150 cases like these as product
7 liability cases. Not only must this Court consider the
8 number of civil judges in Somerset County but also the
9 corresponding amount of support staff and other
10 resources in that county to handle its civil docket.

11 As noted in plaintiff's opposition as well as
12 in the moving papers of defendants, defendant Johnson &
13 Johnson is headquartered in Middlesex County and
14 Middlesex County is the neighboring county of Somerset.

15 Neither party has proposed a recommendation
16 to transfer a venue to Middlesex County, which is also
17 a proper venue. As this Court has previously discussed
18 Bergen County is not a proper venue. Somerset is a
19 proper venue, but so is Middlesex County a proper venue
20 as that is the county where Johnson & Johnson has its
21 headquarters.

22 It cannot be disputed that Middlesex County
23 has the resources and experience to handle cases such
24 as these. Middlesex County has the judicial resources
25 and support staffing resources to suddenly have a

GOLD VS. ETHICON

1 filing of close to over 200 cases pertaining to a
2 particular product.

3 This Court also notes that a previous
4 application was made by plaintiff's counsel for all
5 their cases to be given MCL designation. Having read
6 the submission in support of the application this Court
7 is not surprised that the MCL designation for these
8 non-physiomech hernia mesh cases was rejected.

9 However, this does not preclude a future
10 application by plaintiffs seeking again MCL designation
11 for these cases. This Court is aware of such a
12 scenario that occurred with another product where the
13 first MCL designation was declined, but upon second
14 application was granted.

15 Please do not take these comments as any
16 presumption or conclusion on my part that these non-
17 physiomech hernia cases will receive MCL designation in
18 the future. What I am recognizing, what this Court is
19 recognizing is that it's certainly is possible that
20 upon a second application providing additional
21 information an MCL may be approved.

22 I'm pointing this out as this is another
23 factor I am weighing in making the decision that these
24 cases shall be transferred to Middlesex County, which
25 is an MCL county. Middlesex County is a proper venue

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1 and has the resources to handle cases such as this.
2 Moreover, sending these cases to Middlesex County
3 obviates many of the issues that the plaintiffs were
4 concerned about involving lack of judicial resources in
5 Somerset as well as the fact that Ethicon is located in
6 Somerset County.

7 This Court is confident that our New Jersey
8 voir dire protocols can eliminate any potential issue
9 concerning a potential juror's bias in connection to
10 Ethicon or Johnson & Johnson. There's no indication
11 whatsoever that a fair jury cannot be obtained in
12 Middlesex County, although your issues is raised as to
13 Somerset County, pertaining to these cases.

14 I personally know this can be done because
15 there has been a product liability litigation in
16 Middlesex County against Johnson & Johnson and that
17 litigation resulted in a plaintiff's verdict.

18 In sum, these cases have absolutely no nexus
19 to Bergen County. While this Court appreciates the
20 compliments that plaintiffs have provided in their
21 papers indicting that they have confidence that I would
22 be able to handle these hernia mesh cases, that's not
23 how assignment judges or our court system makes
24 decisions regarding venue. To do so would be
25 tantamount to judge shopping.

GOLD VS. ETHICON

1 Our system does not allow the parties to pick
2 a venue or a judge because they believe a particular
3 judge would be well-suited for particular case or case
4 type. Moreover, there's no guarantee that I would even
5 be on this assignment during the litigation of these
6 cases.

7 As I said before, one must reflect back to
8 the pelvic mesh scenario where the cases were
9 originally venued as an MCL Atlantic County before
10 Judge Higby. Thereafter, Judge Higby was elevated to
11 the Appellate Division and the cases were assigned to
12 Bergen County before Judge Martinotti in 2014 and then
13 reassigned to this court in 2016 as Judge Martinotti
14 was elevated to the federal bench.

15 My point is that for counsel to indicate a
16 particular judge would be well-suited to handle a case
17 has nothing to do with venue for a venue decision. And
18 moreover, there's no guarantee that the requested or
19 suggested judge will oversee the litigation.

20 Accordingly, the motion of defense counsel is
21 granted and these cases that are the subject of this
22 motion are hereby transferred to Middlesex County as
23 well as any other cases involving hernia mesh that do
24 not involve physiomesh.

25 I'm asking defense counsel to provide a list

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1 of those cases which I can annex to an order as an
2 exhibit to make the transition and the transfer
3 orderly.

4 I'm aware that there have been motions filed
5 regarding consolidation. As a result of today's
6 decision, those motions are denied as moot. Any
7 decision regarding consolidation or case management of
8 these cases by one judge shall be decided by motion
9 filed in Middlesex County.

10 MS. PATTERSON: Thank you, Your Honor. As
11 you might expect I have housekeeping questions. How
12 would you like the caption or the order to appear with
13 the appended list that Your Honor has requested?

14 THE COURT: Well, the caption for this motion
15 was all of the cases. So, the order will indicate that
16 pursuant to today's decision placed on the record those
17 cases are transferred to Middlesex County. I --

18 MS. PATTERSON: Should we use the docket
19 number of COTTLE that the arg-- that was placed on the
20 record --

21 THE COURT: Yeah.

22 MS. PATTERSON: -- at the beginning of
23 argument?

24 THE COURT: Yeah. We'll use that docket
25 number, but I think for the order we have to all of the

GOLD VS. ETHICON

1 157 cases listed.

2 MS. PATTERSON: Happy to do that or -- or --

3 THE COURT: Then we'll use that docket number
4 --

5 MS. PATTERSON: Is that sufficient for the
6 Court or is a separate actual order required for each
7 of the cases? We'll do whatever the Court requires.

8 THE COURT: I'm thinking of housekeeping to
9 make is easiest for not me or you, but the people who
10 have to physically do the work.

11 I think we could put forth an order under the
12 one docket number indicating that pursuant to this
13 Court's order, I mean we could discuss the language,
14 all cases listed in Exhibit A are hereby transferred to
15 Middlesex County. But I don't think you have to go
16 through the work of making individual orders. I think
17 we could have an exhibit with each of the cases and the
18 docket number.

19 MS. PATTERSON: And another housekeeping
20 issue. There are 109 cases that are -- had motions
21 filed already.

22 THE COURT: Uh-huh.

23 MS. PATTERSON: Can we just add to the list
24 the cases that have been filed in Bergen for which we
25 have not yet filed motions to transfer --

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1 THE COURT: Yes.
2 MS. PATTERSON: Okay.
3 THE COURT: Yes. And -- and if there's any
4 difficulty with the language, if you want me to look at
5 it first if you want --
6 MS. PATERSON: We'll submit it under the 5D
7 Rule.
8 THE COURT: Right. And if -- I can review it
9 and I can also confer with the people who actually have
10 to do the transferring to ask if they do require
11 anything else. I think we can work that out.
12 MS. PATTERSON: Thank you, Your Honor.
13 MR. KINCANNON: I think an omnibus order
14 would be fine. My question was with regard to how
15 these will these be assigned. Is there any direction
16 or will Middlesex handle that in terms of --
17 THE COURT: Middlesex will handle that.
18 MR. KINCANNON: So, I don't if it'll go to
19 one judge or ten judges and be split up or how this
20 will be administered. So, I'm not sure that's
21 something we will deal with or? I mean, I don't know
22 who to --
23 THE COURT: I'm going --
24 MR. KINCANNON: -- call in Middlesex and say,
25 okay, how do you want us to get before you or deal with

GOLD VS. ETHICON

1 these?
2 THE COURT: The assignment judge in Middlesex
3 will be made aware of this and I would give it some
4 time frame, but I -- I would then suggest a
5 communication by your office to -- to the assignment
6 judge with -- with your concerns or questions.
7 MR. KINCANNON: Understood. Thanks, Your
8 Honor.
9 MS. PATTERSON: Thank you, Your Honor.
10 THE COURT: Anything further?
11 MR. KOTT: Not from the defendants, Your
12 Honor.
13 THE COURT: Okay. So, in terms of -- I'm not
14 going to sign any order because the order that you
15 prepared has to go into Somerset as well as it just
16 encompasses --
17 MR. KOTT: Right.
18 THE COURT: -- 109 cases.
19 MR. KOTT: Right. Well, --
20 MS. PATTERSON: Plus. It would be, about --
21 it includes, about, ten more I think.
22 THE COURT: Right. We need to --
23 MS. PATTERSON: Uh-huh.
24 MR. KOTT: Yeah.
25 THE COURT: We need to rephrase the order.

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ILENE GOLD, et al. v. JOHNSON & JOHNSON, et al. -- September 28, 2018

Sheet 23

44

GOLD VS. ETHICON

1 Okay.

2

MR. KOTT: Yeah.

3

THE COURT: Thank you.

4

MR. KOTT: Okay. Thank you, Your Honor.

5

MR. KINCANNON: Thank you, Your Honor.

6

(Proceedings concluded)

45

CERTIFICATION

I, Brandy Winow, the assigned transcriber, do hereby certify the foregoing transcript of proceedings in the Bergen County Superior Court on September 28, 2018, digitally recorded, Time Index from 10:03:08 a.m. to 10:51:21 a.m., is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded to the best of my knowledge and ability.

/s/ Brandy Winow

Brandy Winow T#654
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Butler, New Jersey 07405

October 5, 2018

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Attorneys for Defendants
Johnson & Johnson & Ethicon, Inc.

JASON COTTLE,

v.

JOHNSON & JOHNSON and ETHICON,
INC.,

Defendants.

Plaintiff,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO. BER-L-7065-17

Civil Action

**ORDER GRANTING
DEFENDANTS' MOTION TO
TRANSFER VENUE IN PART AND
TRANSFERRING TO MIDDLESEX
COUNTY THIS MATTER, ALL
MATTERS INCLUDED ON SCHEDULE
A ATTACHED TO THIS ORDER, AND
ALL FUTURE MATTERS THAT
INCLUDE PRODUCT LIABILITY
CLAIMS INVOLVING AN
ETHICON HERNIA MESH PRODUCT
OTHER THAN PHYSIOMESH**

FILED

OCT. 09 2018

**RACHELLE L. HARZ
J.S.C.**

THIS MATTER having been opened before the Court by McCarter & English, LLP, attorneys for Defendants Johnson & Johnson and Ethicon, Inc., seeking an Order transferring venue of the within matter from Bergen County to Somerset County; and The Court having considered the papers submitted in support of and in opposition to the motion; and The Court on September 28, 2018 having heard oral argument of counsel (Joshua S. Kincannon, Esq., of Lomurro, Munson, Comer, Brown & Schottland, LLC, and Adam Evans, Esq., of the Hollis Law Firm, P.A., counsel for Plaintiff, and David R. Kott, Esq., of McCarter & English, LLP, and Kelly S. Crawford, Esq., of Riker Danzig Scherer Hyland & Perretti, LLP, counsel for Defendants); and The Court having rendered an oral opinion on the record on September 28, 2018; and good cause appearing;

IT IS on this ^{9th} day of ~~October~~, 2018;

ORDERED that:

1. Defendants' Motion to Transfer Venue be and hereby is **GRANTED IN PART** and this matter, all matters included on Schedule A attached to this Order, and all future matters filed in Bergen County that include product liability claims involving an Ethicon Hernia Mesh Product other than Physiomesh are transferred to Middlesex County; and

2. The Clerk, Superior Court of New Jersey, Bergen County, is hereby directed to transfer this matter, all matters included on Exhibit A attached to this Order, and all future matters filed in Bergen County that include product liability claims involving an Ethicon Hernia Mesh Product other than Physiomesh to Middlesex County.

Rachelle L Harz

HON. RACHELLE L. HARZ, J.S.C.

Opposed

Unopposed

oral argument, reasons set forth on the record

EXHIBIT A

SCHEDULE "A" BERGEN COUNTY NON PHYSIO MATTERS.

Plaintiff	Docket No.
Aaron, Daniel & Heather	BER-L-0870-18
Abhold, Mark & Pam	BER-L-5727-18
Adams, Richard J.	BER-L-3951-18
Alexander, Diane	BER-L-1241-18
Alumbaugh, Alan	BER-L-207-18
Alvarado, Daniel/Jessica	BER-L-1479-18
Araway, Viola	BER-L-1516-18
Austin, Diana	BER-L-4204-18
Banks, Lucy	BER-L-4077-18
Bassett, Richard	BER-L-7836-17
Bean, Norman	BER-L-198-18
Benton, Timothy & Sheila	BER-L-3317-18
Blackstone, Janice	BER-L-4332-18
Boyard, Glenn	BER-L-5689-18
Booth, Gloria Jean & Russall	BER-L-3892-18
Boston, Courtney D.	BER-L-4103-18
Boyino, Edwin	BER-L-5691-18
Bradford, William	BER-L-1806-18
Briscoe, Anthony & Francella	BER-L-1691-18
Brooks, Caroline	BER-L-3916-18
Campbell, Cassandra	BER-L-8998-17
Capshaw, Clifton	BER-L-1530-18
Chavira, Juan	BER-L-4489-18
Clements, Charles P.	BER-L-5721-18
Clulee, Sherry Marie	BER-L-3703-18
Collier, Greg	BER-L-2214-18
Cordova, Michael	BER-L-4532-18
Cottle, Jason	HER-L-7065-17
Darnell, David	BER-L-4038-18
Deffenbaugh, Gary	BER-L-3517-18
Dias, Alessandro	BER-L-1471-18
Dlioreto, Edward	BER-L-1018-18
Finotti, James G.	BER-L-3994-18

SCHEDULE "A" BERGEN COUNTY NON PHYSIO MATTERS.

Plaintiff	Docket No.
Fontenot, Emily	BER-L-1513-18
Fowler, Susie	BER-L-8572-17
Gaddis, Troy	BER-L-658-18
Galvez, Michael	BER-L-1393-18
Garrert, Sheneca	BER-L-3726-18
Gately, Brenda	BER-L-9151-17
Gibson, Renee C.	BER-L-1110-18
Godfrey, Holly	BER-L-4334-18
Gold, Hlene	BER-L-8037-17
Gonzales, Maria Luisa A.	BER-L-5726-18
Green, Margaret	BER-L-5687-18
Griffin, Charles	BER-L-8827-17
Guidry, Stephanie	BER-L-4515-18
Hart, Dennis	BER-L-1349-18
Hecker, Austin	BER-L-3728-18
Hendrix, Patricia	BER-L-3751-18
Henley, James G.	BER-L-3015-18
Hinn, John	BER-L-3753-18
Hodge, Pamela	BER-L-2577-18
Holman, Raymond & Cora	BER-L-3808-18
Johnson, Cathy	BER-L-3720-18
Johnson, Heather	BER-L-2003-18
Johnson, Shaunta	BER-L-5379-18
Jones, Christina	BER-L-4082-18
Jones, Eugenia	BER-L-3452-18
Jones, Georgie	BER-L-3913-18
Kranpen-Yerry, Denise	BER-L-1466-18
Lang, Christine M.	BER-L-1067-18
Leeza, Cheryl	BER-L-4559-18
Lindly, James	BER-L-1402-18
Lindsey, Scott E.	BER-L-1210-18
Linnenbrink, Christina	BER-L-8829-17
Lloyd, William	BER-L-2952-18

SCHEDULE "A" BERGEN COUNTY NON PHYSIO MATTERS.

Plaintiff	Docket No.
Lorridge, Robin	BER-L-1467-18
Lowe, Sandra	BER-L-5724-18
Lowrey, Robert	BER-L-4577-18
Lynch, Roy	BER-L-4043-18
Mack, Edward & Robin	BER-L-1220-18
Maestas, Joseph	BER-L-1456-18
Masingo, Jerri Ann	BER-L-5275-18
Mata, Raul	BER-L-4035-18
Mathews, William D.	BER-L-5723-18
McCutcheon, Deanna	BER-L-4475-18
Miller, Ronald	BER-L-2345-18
Morrone, Adele	BER-L-5294-18
Mosby, Russell	BER-L-5722-18
Moskowitz, Scott	BER-L-5011-18
Mounjoy, James & Nancy	BER-L-1480-18
Muniz, Rick	BER-L-3516-18
Newburn, Nakeisha	BER-L-4523-18
Newman, Stephen	BER-L-5296-18
Noakes, Kenneth	BER-L-8276-17
Parham, Roderick	BER-L-4052-18
Payne, Jonathan	BER-L-5719-18
Perez, Maria	BER-L-4486-18
Perez, Nora	BER-L-4115-18
Pikulsky, Jamie & Jeffrey	BER-L-1052-18
Redding, Shonna	BER-L-184-18
Reynolds, Burton	BER-L-279-18
Rice, Melissa	BER-L-197-18
Rivas, Angelina	BER-L-4113-18
Schriner, Yesina	BER-L-1222-18
Scobee, Jerry A.	BER-L-2355-18
Senkel, William	BER-L-1433-18
Shackelford, Cecelia	BER-L-1200-18
Shepherd, Terry T.	BER-L-2354-18

SCHEDULE "A" BERGEN COUNTY NON PHYSIO MATTERS.

Plaintiff	Docket No.
Smith, Diane M.	BER-L-652-18
Smith, Joseph W.	BER-L-1692-18
Smith, Terrence	BER-L-4913-18
Snyder, David	BER-L-2513-18
Soares, Calvin	BER-L-4476-18
Strawser, Janice	BER-L-5034-18
Szaroleta, Christopher	BER-L-1458-18
Tavian, Michael	BER-L-4056-18
Taylor, Cindy	BER-L-4573-18
Trebolo, Walter	BER-L-9133-17
Tyler, Daniel	BER-L-4884-18
Usey, Christina	BER-L-1244-18
Vinas, Daniel	BER-L-5290-18
Ward, Sue E.	BER-L-2353-18
Whitfield, Michael & Melissa	BER-L-4885-18
Williams, James	BER-L-2337-18
Wilson, Donald & Bernadette	BER-L-4800-18
Wolfe, Donna	BER-L-3891-18
Wolfe, Patty	BER-L-3583-18
Woods, Lisa	BER-L-4482-18
Alguacil, Leila	BER-L-6881-18
Asturi, Annette	BER-L-5998-18
Austin, Jeffrey	BER-L-6488-18
Bloeker, Shannon	BER-L-6786-18
Brawley, Ann	BER-L-6008-18
Brown, Lionel Sr. and Doris	BER-L-5656-18
Burns, Gregory and Edie	BER-L-6927-18
Classen, Mary and Anthony C.	BER-L-6162-18
Corgan, Travis	BER-L-6338-18
Delph, Terrie and Matthew	BER-L-6784-18
Dill, Barbara	BER-L-6548-18
Falcon, Lloyd	BER-L-6342-18
Frank, Fontella	BER-L-6358-18

SCHEDULE "A" BERGEN COUNTY NON PHYSIO MATTERS.

Plaintiff	Docket No.
Guy, Louise & Raymond	BER-L-6030-18
Hall, Vivian L.	BER-L-6483-18
Harding, Sheri and Hargis	BER-L-5382-18
Henry, Tracy L.	BER-L-6879-18
Holland, James	BER-L-6486-18
Hughey, Lance	BER-L-6921-18
Ishii, Freedom	BER-L-5950-18
Jacuzzi, Victor	BER-L-5952-18
Johnson, Anna	BER-L-5959-18
Lyon, Michael	BER-L-6484-18
Mahne, Edward & Gale	BER-L-6036-18
McCutcheon, Teresa	BER-L-5954-18
McNally, Sandra	BER-L-5953-18
Moore, Rochelle	BER-L-6367-18
Murphy, Karen	BER-L-6163-18
Newland, Kenneth	BER-L-5956-18
Nonikos, Michael	BER-L-6211-18
Nuri, Lindira and Fatmir	BER-L-6290-18
Palka, Mary L.	BER-L-6487-18
Perez, Joseph	BER-L-6912-18
Pierce, Jerry and Teri	BER-L-6037-18
Redenauer, John, L. Sr.	BER-L-4238-18
Shaw, Jerry	BER-L-5962-18
Skiba, Joseph A.	BER-L-6880-18
Snyder, Rick C.	BER-L-6785-18
Spears, Mark	BER-L-6928-18
Strauss, Nathan K.	BER-L-5248-18
Thibodaux, Cecile G. and Danny	BER-L-6164-18
Vaughn, William	BER-L-5960-18
Warr, Anita	BER-L-5940-18
Waterfield, Floyd and Debra	BER-L-6497-18
Wetch, Debi	BER-L-6494-18
White, Steve	BER-L-6926-18



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December 3, 2018

VIA LAWYERS SERVICE

The Hon: Glenn A. Grant, J.A.D.
Administrative Director of the Courts
Administrative Office of the Courts
of the State of New Jersey
Richard J. Hughes Justice Complex
25 W. Market Street
Trenton, New Jersey 08625

Re: Application Pursuant to R. 4:38A (“Centralized Management of Multicounty Litigation”) Request for Multi-County Litigation Designation for Proceed and Prolene Hernia System Mesh Products

Dear Judge Grant:

We submit this letter on behalf of 205 Plaintiffs¹ who have cases pending in Middlesex County, New Jersey, involving either a Proceed or Prolene Hernia System product. These are hernia mesh products designed, manufactured, marketed, and sold by Defendants, Johnson and Johnson and Ethicon, Inc. (collectively “Defendants”). The products this application seeks to centralize are the Proceed Surgical Mesh and Proceed Ventral Patch (collectively “Proceed”), as well as the Prolene Hernia System (“PHS”). These products comprise over 99% of the hernia mesh cases currently pending against Ethicon in Middlesex County. In addition, Plaintiffs anticipate hundreds of additional cases will be filed in the coming months, and that those filings will continue to grow exponentially over the next several years.

Accordingly, as the Administrative Office of the Courts has consistently done in the past when presented with large numbers of complex cases sharing similar products, injuries, and the same

¹ See attached Exhibit A for the complete list of cases.

allegedly responsible party, we respectfully request that the Proceed and PHS Hernia Mesh cases listed in the attached "Exhibit A" be given Multi-County Litigation designation in accordance with Rule 4:38A.

BACKGROUND

This application addresses the approximately 200 currently pending cases, and any future similar product liability cases filed in the Superior Court against these Defendants alleging injuries attributable to the Proceed or PHS hernia mesh products. All allege that Defendants' Proceed or PHS hernia mesh was defective, and that those defects caused the mesh to fail, resulting in serious injuries and the need for additional medical intervention.

The Proceed and PHS products are all manufactured and sold by Defendants Ethicon and Johnson and Johnson. All are polypropylene-based mesh prosthetics indicated for the repair of hernias. These products are defective and unsafe for their designed and intended use.

The claims that are the subject of this application have one important commonality: all actions allege injuries stemming from certain deleterious properties of polypropylene, the base component of the products discussed in this application. In particular, all injuries alleged in the actions are caused by the interrelated processes of (1) polypropylene degradation via oxidation and/or (2) polypropylene-induced chronic inflammation. This commonality among the claims, as well as the design differences among the products, are explored in more detail below.

Plaintiffs made a previous MCL application regarding these and other Ethicon mesh products which was granted in part only with regard to the Physiomesh hernia mesh products. *See* Exhibit B, 8/15/18 Notice to the Bar. Thereafter, Defendants sought to transfer all Proceed and PHS cases to Somerset County. The Court transferred the cases to Middlesex County, but reminded counsel that they could re-apply for MCL designation:

However, this does not preclude a future application by plaintiffs seeking again MCL designation for these cases. This Court is aware of such a scenario that occurred with another product where the first MCL designation was declined, but upon second application was granted. Please do not take these comments as any presumption or conclusion on my part that these non-physiomesh hernia cases will receive MCL designation in the future. What I am recognizing, what this Court is recognizing is that it's certainly is possible that upon a second application providing additional information an MCL may be approved.

See Exhibit C, September 28, 2018 Transcript of Hearing, T. 37:9-21.

On October 25, 2018—after these cases were transferred to Middlesex—the Civil Division Manager wrote to counsel regarding these cases:

Please see the enclosed #08-12 directive regarding Multicounty Litigation Guidelines and Criteria for Designation, which outlines the procedure for requesting designation of a case as multicounty litigation for centralized management.

See Exhibit D, October 25, 2018 Letter from Ian Ratzlaff, Civil Division Manager – Middlesex County.

Following the guidance from both Courts, Plaintiffs now respectfully submit this application for only the Proceed and PHS mesh claims. Plaintiffs submit that these products are appropriate for a single MCL designation, but both respective product lines have sufficiently numerous claims already filed to warrant an individual MCL should the Court find that separate designations will provide the most benefit.²

Proceed Surgical Mesh and Proceed Ventral Patch

Proceed Surgical Mesh (“Proceed”) and Proceed Ventral Patch (“PVP”) have designs incorporating a layer of oxidized regenerated cellulose (“ORC”) over a layer of polydioxanone, which in turn coats a polypropylene mesh. Both Proceed and PVP are marketed as being safe to implant intraperitoneally (*i.e.*, on the innermost surface of the abdominal wall, in contact with the bowel). Polypropylene is known to cause the formation of dense scar tissue (known as adhesions) when in direct contact with the bowel. Therefore, the stated purpose of the ORC layer on both Proceed products is to form an adhesion-resistant, dissolvable barrier between the polypropylene component of the mesh and the bowel. However, Proceed and PVP have been found to *contribute to* adhesion formation and scar tissue proliferation by operation of multiple design defects.

The defective designs of these products begin with the use of polypropylene as a base material. For decades it has been known that polypropylene incites a profound acute and chronic inflammatory response when in contact with soft tissue.³ One prominent feature of the human inflammatory foreign body response is the formation of scar tissue. Because the inflammatory response to polypropylene continues as long as the polypropylene is present in the body, the formation of scar tissue (alongside many other biological processes) continues long after the initial post-operative healing phase. As a result, dense, fibrotic scar tissue forms among the polypropylene filaments making up the mesh and, after the ORC has dissolved, between the mesh and the bowel. Furthermore, the proliferation of scar tissue among the polypropylene filaments leads to contracture or shrinkage of the mesh, a process causing a variety of injuries reflected in these actions.

Another common defect contributing to adhesion formation is the use of ORC as a supposed “anti-adhesion barrier”. Defendants’ ORC compound was first designed and patented as a hemostatic agent. That is, in the presence of blood or other fibrinous exudate (an unavoidable circumstance when implanting a foreign material in the human body), ORC causes blood to clot. One of the mechanisms by which blood clots, *i.e.*, the expression of vascular endothelial growth factor, *is the same mechanism that causes adhesions to form*. In other words, Defendants knew or should have known that ORC was

²New Jersey has in the recent past consolidated cases involving multiple mesh products made by the same manufacturer with similar design features and attendant injuries. *In Re Pelvic Mesh/Gynecare Litigation*, Master Case No. L-6341-10-CT, currently before Judge Harz in Bergen County, includes claims filed against Ethicon and its affiliates for approximately ten different pelvic mesh products. Plaintiffs here only seek inclusion of three Ethicon hernia mesh products which should result in a more narrow and manageable litigation. Nevertheless, the pelvic mesh MCL is an example of how coordination of these types of claims is both appropriate and the most efficient method to litigating these cases in state court.

³ Klinge, U. & Klosterhalfen, B, (1999). Foreign Body Reaction to Meshes Used for the Repair of Abdominal Wall Hernias. *Eur. Journal Surg.*, 165: 665-673.

not an effective adhesion prevention barrier because the process making ORC an effective hemostat is the very same process leading to the formation of painful, sometimes life-threatening, adhesions.

In addition to injuries resulting from dense, fibrotic adhesions, the Proceed meshes have an alarmingly high rate of mechanical failure, sometimes described by surgeons as "Proceed rupture." The phenomenon of Proceed rupture arises from yet another design defect—the Defendants' choice to sterilize the products using gamma irradiation. The Proceed meshes are the only polypropylene mesh products in the world which are sterilized using gamma irradiation. The reason gamma is not typically used to sterilize polypropylene is that medical product manufacturers (including Defendants) have known for decades that gamma irradiation causes rapid oxidation of the polymer, drastically reducing its molecular weight and thus its tensile strength. Because other sterilization methods would significantly degrade the ORC, however, Defendants ignored the lessons of decades of polymer science and prior litigations involving their products, and designed the Proceed meshes to go through a gamma sterilization cycle. Although this subjects patients to an increased risk of dangerous reoperation as a result of mechanical failure of the Proceed mesh, Defendants have never shared this information with the physicians to whom they market their products.

Prolene Hernia System

The Prolene Hernia System ("PHS") is a three-dimensional mesh device consisting of two flat layers of heavyweight, small-pore monofilament polypropylene mesh, separated by a cylinder of heavyweight, small-pore monofilament polypropylene mesh. Defendants market PHS for both inguinal and ventral hernia repairs. Although PHS is intended to minimize the probability of hernia recurrence, its design attempts to do so by placing a polypropylene layer in the anterior and posterior compartments of the inguinal region or abdominal wall—*which is an excessive amount of small-pore mesh material beyond that which is typically present in a comparative hernia mesh product*. The high volume of polypropylene incorporated in the PHS design results in an intense foreign body inflammatory response that can produce a cascade of injurious complications arising from the scar-formation processes described above. These include, but are not limited to, profound contracture of the mesh, and chronic and debilitating pain, identical defects to those described for the Proceed meshes above.

Additionally, PHS is known to erode through native tissues and migrate away from the situs of implant. This phenomenon is due largely to the fact that polypropylene degrades in the body through oxidation. As the polypropylene oxidizes, it loses the flexibility it has at implantation and becomes rigid and brittle. That rigidity, coupled with its presence in soft tissue—especially dynamic anatomical areas such as the groin—creates a risk that the polypropylene will erode through those tissues.

Commonalities between Proceed and PHS.

Significant commonalities exist between the product lines, germane to Rule 4:38A interests. With regard to the designs of the products, both the Proceed and PHS meshes are made from knitted polypropylene, and both entail design elements which (1) set them apart from an uncoated, two-dimensional mesh design and (2) make them uniquely prone to complications. Second, chronic and profound inflammation caused by the presence of polypropylene in soft tissue and/or the inexorable degradation of polypropylene *in vivo* are at the heart of every Proceed and PHS case in this application.

As a result, there is significant overlap among Proceed and PHS in the presentation of injuries and treatment of those injuries. Plaintiffs suffering injuries from Proceed and PHS, respectively, often report chronic, debilitating pain, migration of the product away from the original implant site, infection, and/or adhesion of the product to tissues and structures to which the product is not meant to adhere. For both Proceed and PHS, onset of conditions such as these often necessitate surgical intervention, including complete or partial removal of the mesh. Thus, there will be significant overlap in discovery on issues of polypropylene sourcing, filament manufacturing, post-market surveillance, causation and countless other issues. Indeed, Defendants have proposed to serve the same document production for all Proceed cases and all PHS cases. Further, there are many corporate witnesses with knowledge relevant to both the Proceed and PHS devices.

COORDINATION IS APPROPRIATE

As set forth in the guidelines, multi-county litigation is warranted when litigation involves a large number of parties; many claims with common, recurrent issues of law and fact; geographical dispersment of parties; a high degree of commonality of injury; a value interdependence between different claims; and a degree of remoteness between the court and actual decision-makers in the litigation, among other considerations.

This litigation meets the above criteria. Many common, recurrent issues of law and fact are associated with this class of products. They share common Defendants (and likely the same corporate witnesses), design elements, materials, manufacturing and production methods, and underlying science. Additionally, the parties are geographically dispersed, (as these products were sold throughout the nation); a high degree of commonality of injury exists; and a likely value interdependence exists among different claims. All of these considerations warrant MCL designation.

At least 200 cases have already been filed, and all involve recurrent legal issues of design defect, failure to warn, breaches of warranties and the possibility of manufacturing defects. There are significant overlapping factual liability issues relating to the selection of the polypropylene and other materials utilized in Defendants' hernia mesh; its manufacture and sterilization, the nature of the defect; delay or failure in recalling the products; failure to comply with good manufacturing practices; and a host of other related factual issues.

Separate discovery demands have been served in many of the cases, including pathology requests necessitating a uniform pathology protocol, further necessitating an MCL designation for these cases as it will allow for efficiencies in discovery that will conserve the resources of the judicial system and the parties.

Structure of Coordination

The undersigned counsel contend that the interests of efficiency and resource conservation of the judiciary, as well as of the parties, would support a single MCL in which cases involving Proceed and PHS are coordinated. Due to the commonality of Defendants and allegations between Proceed and PHS cases, as well as significant overlap in relevant documents, corporate witnesses, expert discovery and counsel for the respective parties, coordination into a single MCL of the Proceed and PHS Hernia

Mesh cases would serve the purposes of Rule 4:38A, in that it would effect considerable conservation of time and resources.

Plaintiffs propose the following New Jersey venues for consolidation as there are arguments favoring any of the three potential MCL counties:

- Atlantic: the Physiomesh MCL is currently pending in Atlantic County. Approximately 40% of the cases in that MCL allege injuries caused by both a Physiomesh device and a Proceed or PHS device;
- Middlesex: the cases affected by this MCL application are currently pending in Middlesex County; and
- Bergen: the pelvic mesh MCL is currently pending in Bergen County, the defendants and allegations in the pelvic mesh litigation overlap with the allegations outlined in this application.

In light of all the factors and information discussed above, the parties respectfully request that the Proceed and PHS cases be designated as Multicounty Litigation for Centralized Management pursuant to Rule 4:38A. Plaintiffs defer to the judiciary to define the scope and locus of the MCL(s) necessary to effectuate the policies underlying Rule 4:38A.

Respectfully submitted,

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Richard T. Bernardo, Esq. (via Lawyer's Service)

EXHIBIT A

Proceed/PHS Case Listing in Middlesex County Superior Court as of December 3, 2018

Plaintiff	Docket No.	Case Type	Filing Firm
Aaron, Daniel	MID-L-6761-18	Proceed Ventral Patch	Locks Law Firm
Abhold, Mark Abhold, Pam	MID-L-6763-18	Proceed Surgical Mesh	LMCBS/Levin Papantonio
Adams, Richard	MID-L-6779-18	Proceed Surgical Mesh	Rheingold Gluffra Ruffo & Plotkin, LLP
Alcantara, Mariela Hernandez-Quijano, Antonio	MID-L-7718-18	Proceed Surgical Mesh	Pogust, Braslow & Milrood & Sanders Phillips Grossman
Alexander, Diane	MID-L-6780-18	Proceed Ventral Patch	LMCBS/Fleming, Nolen & Jez, LLP
Aiguacil, Lella	MID-L-7011-18	Prolene Hernia System	LMCBS/Fleming, Nolen & Jez, LLP
Alumbaugh, Alan	MID-L-6782-18	Proceed Ventral Patch	LMCBS/Hollis Law Firm
Alvarado, Danny	MID-L-6783-18	Proceed Surgical Mesh	LMCBS
Anawaty, Viola	MID-L-6784-18	Proceed Surgical Mesh	LMCBS/Hollis Law Firm
Asturi, Annette	MID-L-7013-18	Prolene Hernia System	LMCBS/Allan Berger & Associates
Austin, Diana	MID-L-6786-18	Proceed Surgical Mesh	Pogust, Braslow & Milrood & Sanders Phillips Grossman
Austin, Jeffrey	MID-L-7014-18	Proceed Ventral Patch	LMCBS/Fleming, Nolen & Jez, LLP
Bailey, Kenneth Bailey, Lori	MID-L-7993-18	Prolene Hernia System	LMCBS/Levin Papantonio
Banks, Lucy	MID-L-6787-18	Proceed Surgical Mesh	LMCBS/Fleming, Nolen & Jez, LLP
Bassett, Richard	MID-L-6788-18	Proceed Ventral Patch	LMCBS/Fleming, Nolen & Jez, LLP
Bean, Norman	MID-L-6789-18	Proceed Surgical Mesh	LMCBS/Fleming, Nolen & Jez, LLP
Bennett, Ralph	MID-L-6426-18	Proceed Surgical Mesh	LMCBS/Hollis Law Firm
Benton, Timothy Benton, Sheila	MID-L-6790-18	Proceed Ventral Patch	LMCBS/Levin Papantonio
Blackstone, Janice	MID-L-6794-18	Proceed Surgical Mesh	LMCBS/Fleming, Nolen & Jez, LLP
Blair, Joseph	MID-L-7085-18	Proceed Surgical Mesh	LMCBS/Jones Ward
Blocker, Shannon	MID-L-7015-18	Proceed Ventral Patch	Pogust, Braslow & Milrood
Bolyard, Glenn	MID-L-6795-18	Prolene Hernia System	LMCBS/Hollis Law Firm
Booth, Gloriajean Booth, Russell	MID-L-6796-18	Proceed Surgical Mesh	Pogust, Braslow & Milrood & Sanders Phillips Grossman
Boston, Courtney	MID-L-6799-18	Prolene Hernia System	LMCBS/Fleming, Nolen & Jez, LLP
Bovino, Edwin	MID-L-6800-18	Prolene Hernia System	LMCBS/Hollis Law Firm
Braden, Lisa	MID-L-6805-18	Proceed Ventral Patch	LMCBS/Hollis Law Firm
Bradford, William	MID-L-6804-18	Prolene Hernia System	LMCBS/Hollis Law Firm
Brawley, Ann	MID-L-7016-18	Prolene Hernia System	LMCBS/Allan Berger & Associates
Briscoe, Anthony	MID-L-6806-18	Prolene Hernia System	Pogust, Braslow & Milrood
Brooks, Caroline	MID-L-6808-18	Proceed Surgical Mesh	LMCBS/Fleming, Nolen & Jez, LLP
Brown, Lionel Brown, Doris	MID-L-7017-18	Proceed Ventral Patch	Pogust, Braslow & Milrood
Burns, Gregory Burns, Edie	MID-L-7018-18	Proceed Ventral Patch	LMCBS/Levin Papantonio
Campbell, Cassandra	MID-L-6812-18	Proceed Surgical Mesh & Proceed Ventral Patch	LMCBS/Hollis Law Firm
Capshaw, Clifton	MID-L-6814-18	Proceed Surgical Mesh	LMCBS/Krause & Kinsman
Carlson, Richard	MID-L-7086-18	Prolene Hernia System	Pogust, Braslow & Milrood & Sanders Phillips Grossman
Cashe, Jeanette	MID-L-7992-18	Proceed Surgical Mesh	LMCBS/Hollis Law Firm
Chavira, Juan	MID-L-6822-18	Prolene Hernia System	LMCBS/Krause & Kinsman
Classen, Mary Classen, Anthony C.	MID-L-7019-18	Proceed Ventral Patch	LMCBS/Allan Berger & Associates
Clements, Charles	MID-L-6824-18	Proceed Surgical Mesh	LMCBS/Fleming, Nolen & Jez, LLP

Proceed/PHS Case Listing in Middlesex County Superior Court as of December 3, 2018

Clulee, Sherry Marie	MID-L-6825-18	Proceed Surgical Mesh	Pogust, Braslow & Milrood
Coleman, William	MID-L-7400-18	Prolene Hernia System	LMCBS/Hollis Law Firm
Collier, Greg	MID-L-6826-18	Proceed Surgical Mesh	LMCBS/Hollis Law Firm
Cordova, Michael	MID-L-6827-18	Proceed Surgical Mesh	LMCBS/Krause & Kinsman
Corgan, Travis	MID-L-7020-18	Prolene Hernia System	LMCBS/McDonald Worley
Cottle, Jason	MID-L-6828-18	Proceed Ventral Patch	LMCBS/Hollis Law Firm
Cranwell, Patricia	MID-L-7989-18	Proceed Surgical Mesh	LMCBS/Hollis Law Firm
Darnell, David	MID-L-6829-18	Proceed Ventral Patch	LMCBS/Fleming, Nolen & Jez, LLP
Davis, Russell	MID-L-7719-18	Proceed Ventral Patch	Pogust, Braslow & Milrood & Sanders Phillips Grossman
Davis, Kelly			
Deffenbaugh, Gary	MID-L-6830-18	Proceed Ventral Patch	LMCBS/Hollis Law Firm
Delph, Terrie	MID-L-7021-18	Proceed Surgical Mesh	Pogust, Braslow & Milrood & Sanders Phillips Grossman
Delph, Matthew			
Dias, Alexsandro	MID-L-6831-18	Prolene Hernia System	LMCBS/Hollis Law Firm
Dill, Barbara	MID-L-7022-18	Proceed Surgical Mesh	Pogust, Braslow & Milrood & Sanders Phillips Grossman
Dill, John Irvin			
Diloreto, Edward	MID-L-6832-18	Proceed Ventral Patch	LMCBS/Fleming, Nolen & Jez, LLP
Dorman, John	MID-L-7547-18	Proceed Surgical Mesh	LMCBS/Burke Harvey
Eccles, Keith	MID-L-6370-18	Proceed Ventral Patch	LMCBS/Allan Berger & Associates
Eccles, Lauren			
Espino, Javier	MID-L-7957-18	Proceed Surgical Mesh	LMCBS/McDonald Worley
Falcon, Lloyd	MID-L-7023-18	Proceed Surgical Mesh	LMCBS/McDonald Worley
Farmer, Michael	MID-L-7099-18	Proceed Ventral Patch	LMCBS/Hollis Law Firm
Favors, Floyd	MID-L-6386-18	Proceed Ventral Patch	LMCBS/Allan Berger & Associates
Favors, Carol			
Finotti, James	MID-L-6833-18	Proceed Surgical Mesh	Rheingold Giuffra Ruffo & Plotkin, LLP
Fontenot, Emily	MID-L-6844-18	Proceed Ventral Patch	LMCBS/Hollis Law Firm
Fowler, Susie	MID-L-6845-18	Proceed Ventral Patch	LMCBS/Fleming, Nolen & Jez, LLP
Frank, Fontella	MID-L-7024-18	Proceed Ventral Patch	LMCBS/McDonald Worley
Gaddis, Troy	MID-L-6846-18	Proceed Ventral Patch	LMCBS/Hollis Law Firm & Holman Schiavone
Galvez, Michael	MID-L-6847-18	Prolene Hernia System	LMCBS/Hollis Law Firm
Garner, Haley	MID-L-7720-18	Proceed Ventral Patch	Sanders Phillips Grossman, LLC
Garrett, Shenecca	MID-L-6848-18	Proceed Surgical Mesh	LMCBS/Fleming, Nolen & Jez, LLP
Gateley, Brenda	MID-L-6849-18	Proceed Surgical Mesh	LMCBS/Hollis Law Firm
Gibson, Renee	MID-L-6850-18	Proceed Ventral Patch	LMCBS/Fleming, Nolen & Jez, LLP
Godfrey, Holly	MID-L-6851-18	Prolene Hernia System	LMCBS/Fleming, Nolen & Jez, LLP
Gold, Ilene	MID-L-6852-18	Proceed Surgical Mesh	Pogust, Braslow & Milrood
Gonzales, Maria	MID-L-6853-18	Proceed Surgical Mesh	LMCBS/Fleming, Nolen & Jez, LLP
Gonzalez, Ruben	MID-L-7280-18	Proceed Ventral Patch	Pogust, Braslow & Milrood & Sanders Phillips Grossman
Gonzalez, Silvia			
Green, Margaret	MID-L-6877-18	Proceed Surgical Mesh	LMCBS/Hollis Law Firm
Greenklepper, Rochelle	MID-L-6687-18	Prolene Hernia System	LMCBS/Fleming, Nolen & Jez, LLP
Griffin, Charles	MID-L-6878-18	Proceed Ventral Patch	LMCBS/Hollis Law Firm
Guidry, Stephanie	MID-L-6879-18	Proceed Surgical Mesh	LMCBS/Burke Harvey
Guy, Louise	MID-L-7028-18	Prolene Hernia System	LMCBS/Allan Berger & Associates
Guy, Raymond			
Hall, Vivian	MID-L-7029-18	Proceed Surgical Mesh	LMCBS/Fleming, Nolen & Jez, LLP
Hanson, Scott	MID-L-5813-18	Proceed Ventral Patch	LMCBS/Hollis Law Firm
Harding, Sheri	MID-L-7030-18	Proceed Surgical Mesh	Pogust, Braslow & Milrood & Sanders Phillips Grossman
Harding, Hargis			
Hart, Dennis	MID-L-6880-18	Proceed Surgical Mesh	LMCBS/Hollis Law Firm

Proceed/PHS Case Listing in Middlesex County Superior Court as of December 3, 2018

Hecker, Austin	MID-L-6881-18	Proceed Ventral Patch	LMCBS/Fleming, Nolen & Jez, LLP
Hendrix, Patricia	MID-L-6882-18	Proceed Surgical Mesh	LMCBS/Fleming, Nolen & Jez, LLP
Henley, James	MID-L-6883-18	Prolene Hernia System	Rheingold Giuffra Ruffo & Plotkin, LLP
Henry, Tracy	MID-L-7031-18	Prolene Hernia System	LMCBS/Fleming, Nolen & Jez, LLP
Hickey, Barbie Hickey, John	MID-L-7721-18	Prolene Hernia System	Pogust, Braslow & Milrood & Sanders Phillips Grossman
Hinn, John	MID-L-6884-18	Proceed Surgical Mesh	LMCBS/Hollis Law Firm
Hodge, Pamela	MID-L-6887-18	Proceed Surgical Mesh	LMCBS/Hollis Law Firm & Burke Harvey
Holland, James	MID-L-7032-18	Prolene 3D	Pogust, Braslow & Milrood & Sanders Phillips Grossman
Holman, Raymond Holman, Cora	MID-L-6888-18	Proceed Surgical Mesh	Pogust, Braslow & Milrood
House, Angela	MID-L-7132-18	Proceed Surgical Mesh	LMCBS/Fleming, Nolen & Jez, LLP
Hughey, Lance	MID-L-7033-18	Proceed Surgical Mesh & Prolene Hernia System	LMCBS/Hollis Law Firm
Ishil, Freedom	MID-L-7034-18	Proceed Ventral Patch	LMCBS/Hollis Law Firm
Jacuzzi, Victor	MID-L-7035-18	Proceed Ventral Patch	LMCBS/Hollis Law Firm
Johnson, Anna	MID-L-7036-18	Proceed Surgical Mesh	LMCBS/Hollis Law Firm
Johnson, Cathy	MID-L-6889-18	Proceed Ventral Patch	LMCBS/Fleming, Nolen & Jez, LLP
Johnson, Heather	MID-L-6890-18	Prolene Hernia System	LMCBS/Krause & Kinsman
Johnson, Shaunta	MID-L-6891-18	Proceed Surgical Mesh	LMCBS/Hollis Law Firm
Jones, Christina	MID-L-6892-18	Proceed Ventral Patch	LMCBS/Levin Papantonio
Jones, Eugenia	MID-L-6906-18	Proceed Surgical Mesh & Proceed Ventral Patch	Pogust, Braslow & Milrood
Jones, Georcie	MID-L-6908-18	Proceed Ventral Patch	LMCBS/Fleming, Nolen & Jez, LLP
Kiger, Claude	MID-L-7325-18	Proceed Surgical Mesh	LMCBS/Burke Harvey
Kinder, Marion Kinder, Dorma	MID-L-7722-18	Proceed Ventral Patch	Pogust, Braslow & Milrood & Sanders Phillips Grossman
Krampen-Yerry, Denise	MID-L-6909-18	Proceed Ventral Patch	LMCBS/Krause & Kinsman
Landers, Julie	MID-L-6760-18	Proceed Surgical Mesh	LMCBS/Hollis Law Firm
Lang, Christine	MID-L-6910-18	Proceed Ventral Patch	LMCBS/Fleming, Nolen & Jez, LLP
Lecza, Cheryl	MID-L-6912-18	Proceed Surgical Mesh & Prolene Hernia System	LMCBS/Hollis Law Firm
Lindly, James	MID-L-6913-18	Prolene Hernia System	LMCBS/Krause & Kinsman
Lindsey, Scott	MID-L-6914-18	Proceed Ventral Patch	Pogust, Braslow & Milrood
Linnenbrink, Christina	MID-L-6916-18	Proceed Ventral Patch	LMCBS/Hollis Law Firm
Lloyd, William	MID-L-6917-18	Proceed Ventral Patch	LMCBS/Hollis Law Firm
Lotridge, Robin	MID-L-6925-18	Prolene Hernia System	LMCBS/Hollis Law Firm
Lowe, Sandra	MID-L-6926-18	Proceed Ventral Patch	LMCBS/Fleming, Nolen & Jez, LLP
Lowrey, Robert	MID-L-6930-18	Proceed Surgical Mesh	Goldman Scarlato & Penny
Lujan, Daniel Lujan, Irma	MID-L-7279-18	Proceed Ventral Patch	Pogust, Braslow & Milrood & Sanders Phillips Grossman
Lynch, Roy	MID-L-6931-18	Proceed Ventral Patch	LMCBS/Fleming, Nolen & Jez, LLP
Lyon, Michael	MID-L-7037-18	Proceed Ventral Patch	LMCBS/Levin Papantonio
Mack, Edward Mack, Robin	MID-L-6932-18	Proceed Surgical Mesh	Pogust, Braslow & Milrood
Maestas, Joseph	MID-L-6934-18	Prolene Hernia System	LMCBS/Hollis Law Firm
Mahne, Edward Mahne, Gale	MID-L-7038-18	Prolene Hernia System	LMCBS/Allan Berger & Associates
Mangan, James	MID-L-7988-18	Proceed Surgical Mesh & Proceed Ventral Patch	LMCBS/Hollis Law Firm
Martinez, Anna	MID-L-8025-18	Proceed Ventral Patch	LMCBS

Proceed/PHS Case Listing in Middlesex County Superior Court as of December 3, 2018

Masingo, Jerri	MID-L-6935-18	Proceed Surgical Mesh	Pogust, Braslow & Milrood & Sanders Phillips Grossman
Mata, Raul	MID-L-6936-18	Prolene Hernia System	LMCBS/Fleming, Nolen & Jez, LLP
Mathews, William	MID-L-6937-18	Proceed Surgical Mesh	LMCBS/Fleming, Nolen & Jez, LLP
Matz, Michael	MID-L-6331-18	Proceed Surgical Mesh	LMCBS/Hollis Law Firm
McCutcheon, Deanna	MID-L-6939-18	Proceed Surgical Mesh	LMCBS/Hollis Law Firm
McCutcheon, Teresa	MID-L-7039-18	Proceed Surgical Mesh	LMCBS/Hollis Law Firm
McNally, Sandra	MID-L-7040-18	Proceed Surgical Mesh	LMCBS/Hollis Law Firm
Miller, Ronald	MID-L-6940-18	Prolene Hernia System	LMCBS/Krause & Kinsman
Moore, Rochelle	MID-L-7041-18	Proceed Ventral Patch	LMCBS/McDonald Worley
Morrone, Adele	MID-L-6942-18	Proceed Surgical Mesh	LMCBS/Hollis Law Firm
Mosby, Russell	MID-L-6943-18	Prolene Hernia System	LMCBS/Fleming, Nolen & Jez, LLP
Moskowitz, Scott	MID-L-6945-18	Prolene Hernia System	Locks Law Firm
Mountjoy, James Mountjoy, Nancy	MID-L-6946-18	Proceed Surgical Mesh	LMCBS
Mullins, James	MID-L-7548-18	Prolene Hernia System	LMCBS/Hollis Law Firm
Muniz, Rick	MID-L-6947-18	Proceed Surgical Mesh	LMCBS/Hollis Law Firm
Munoz, Rhonda	MID-L-7342-18	Prolene Hernia System	LMCBS/Allan Berger & Associates
Murphy, Karen	MID-L-7042-18	Proceed Ventral Patch	LMCBS/Allan Berger & Associates
Nelson, Knute Nelson, Jasmine	MID-L-6420-18	Proceed Ventral Patch	LMCBS
Newburn, Nakeisha	MID-L-6949-18	Proceed Surgical Mesh	LMCBS/Hollis Law Firm
Newland, Kenneth	MID-L-7043-18	Proceed Surgical Mesh	LMCBS/Hollis Law Firm
Newman, Stephen	MID-L-6950-18	Prolene Hernia System	LMCBS
Noakes, Kenneth	MID-L-6951-18	Proceed Ventral Patch	LMCBS/Fleming, Nolen & Jez, LLP
Nomikos, Michael	MID-L-7044-18	Prolene Hernia System	LMCBS/Fleming, Nolen & Jez, LLP
Nuri, Lindita Nuri, Fatmir	MID-L-7045-18	Proceed Surgical Mesh	Rheingold Giuffra Ruffo & Plotkin, LLP
Oglesby, Stephanie	MID-L-7310-18	Proceed Surgical Mesh	Baron & Budd
Palka, Mary	MID-L-7047-18	Proceed Surgical Mesh	LMCBS/Fleming, Nolen & Jez, LLP
Parham, Rodrick	MID-L-6952-18	Proceed Ventral Patch	LMCBS/Fleming, Nolen & Jez, LLP
Payne, Jonathan	MID-L-6953-18	Proceed Ventral Patch	LMCBS/Fleming, Nolen & Jez, LLP
Pepper, Timothy Pepper, Cynthia	MID-L-7723-18	Prolene Hernia System	Pogust, Braslow & Milrood & Sanders Phillips Grossman
Perez, Joseph	MID-L-7048-18	Proceed Surgical Mesh	LMCBS/Hollis Law Firm
Perez, Maria	MID-L-6954-18	Proceed Surgical Mesh	LMCBS/Krause & Kinsman
Perez, Nora	MID-L-6955-18	Prolene Hernia System	Pogust, Braslow & Milrood & Sanders Phillips Grossman
Phillips, Tammy	MID-L-6369-18	Proceed Ventral Patch	LMCBS/Allan Berger & Associates
Pierce, Jerry Lee Pierce, Teri	MID-L-7049-18	Prolene Hernia System	LMCBS/Allan Berger & Associates
Pikulsky, Jamie Pikulsky, Jeffrey	MID-L-6956-18	Proceed Ventral Patch	LMCBS/Levin Papantonio
Piper, James	MID-L-7282-18	Proceed Surgical Mesh	Pogust, Braslow & Milrood & Sanders Phillips Grossman
Ransford, Michael	MID-L-7990-18	Proceed Surgical Mesh & Proceed Ventral Patch	LMCBS/Hollis Law Firm
Redding, Shonna	MID-L-6957-18	Proceed Ventral Patch	LMCBS/Hollis Law Firm & Holman Schiavone
Reed, James	MID-L-6318-18	Prolene Hernia System	LMCBS/Hollis Law Firm
Reynolds, Burton	MID-L-6959-18	Proceed Surgical Mesh	LMCBS/Hollis Law Firm
Rice, Melissa	MID-L-6960-18	Proceed Surgical Mesh	LMCBS/Hollis Law Firm

Proceed/PHS Case Listing in Middlesex County Superior Court as of December 3, 2018

Rigney, Jonetta Rigney, Darell	MID-L-7724-18	Prolene Hernia System	LMCBS/Levin Papantonio
Rivas, Angelina	MID-L-6961-18	Prolene Hernia System	LMCBS/Hollis Law Firm
Rudenauer, John	MID-L-7050-18	Proceed Ventral Patch	Cowper Law
Schriner, Yesenia	MID-L-6962-18	Proceed Ventral Patch	LMCBS/Hollis Law Firm
Scobee, Jerry	MID-L-6964-18	Proceed Ventral Patch	LMCBS/Fleming, Nolen & Jez, LLP
Senkel, William	MID-L-6965-18	Prolene Hernia System	LMCBS/Hollis Law Firm
Shackelford, Cecelia	MID-L-6966-18	Proceed Ventral Patch	LMCBS/Fleming, Nolen & Jez, LLP
Shaw, Jerry	MID-L-7051-18	Prolene Hernia System	LMCBS/Hollis Law Firm
Shepherd, Terry	MID-L-6967-18	Proceed Ventral Patch	LMCBS/Fleming, Nolen & Jez, LLP
Skiba, Joseph	MID-L-7052-18	Proceed Ventral Patch	LMCBS/Fleming, Nolen & Jez, LLP
Smith, Diane	MID-L-6990-18	Proceed Ventral Patch	LMCBS/Fleming, Nolen & Jez, LLP
Smith, Joseph	MID-L-6991-18	Proceed Ventral Patch	Pogust, Braslow & Milrood
Smith, Terrence Smith, Lucy	MID-L-6992-18	Prolene Hernia System	LMCBS/Levin Papantonio
Snyder, David	MID-L-6993-18	Proceed Ventral Patch	LMCBS/Krause & Kinsman
Snyder, Rick	MID-L-7053-18	Prolene Hernia System	Pogust, Braslow & Millrood
Soares, Calvin	MID-L-6994-18	Prolene 3D	LMCBS/Fleming, Nolen & Jez, LLP
Spears, Mark	MID-L-7054-18	Proceed Surgical Mesh	LMCBS/Hollis Law Firm
Strauss, Nathan	MID-L-7055-18	Prolene Hernia System	Rheingold Giuffra Ruffo & Plotkin, LLP
Strawser, Janice	MID-L-6996-18	Proceed Ventral Patch	LMCBS/Burke Harvey
Szaroleta, Christopher	MID-L-6997-18	Prolene Hernia System	LMCBS/Hollis Law Firm
Tavian, Michael	MID-L-6998-18	Prolene Hernia System	LMCBS/Hollis Law Firm
Taylor, Cindy	MID-L-6999-18	Proceed Surgical Mesh	Pogust, Braslow & Milrood & Sanders Phillips Grossman
Thibodaux, Cecile Thibodaux, Danny	MID-L-7056-18	Proceed Ventral Patch	LMCBS/Allan Berger & Associates
Trebolo, Jr., Walter	MID-L-7000-18	Proceed Surgical Mesh	LMCBS/Hollis Law Firm
Tyler, Daniel	MID-L-7001-18	Proceed Ventral Patch	LMCBS
Usey, Christina	MID-L-7002-18	Proceed Surgical Mesh	LMCBS/Fleming, Nolen & Jez, LLP
Varner, Rebecca	MID-L-5814-18	Proceed Ventral Patch	LMCBS/Hollis Law Firm
Vaughan, William	MID-L-7057-18	Proceed Ventral Patch	LMCBS/Hollis Law Firm
Vernick, Emmy	MID-L-6368-18	Proceed Ventral Patch	LMCBS/Allan Berger & Associates
Vinas, Daniel	MID-L-7003-18	Prolene Hernia System	Rheingold Giuffra Ruffo & Plotkin, LLP
Ward, Sue	MID-L-7004-18	Proceed Surgical Mesh	LMCBS/Fleming, Nolen & Jez, LLP
Warr, Anita	MID-L-7058-18	Proceed Surgical Mesh	Pogust, Braslow & Milrood & Sanders Phillips Grossman
Waterfield, Floyd Waterfield, Debra	MID-L-7059-18	Proceed Ventral Patch	LMCBS/Levin Papantonio
Wetch, Debi	MID-L-7060-18	Proceed Surgical Mesh	LMCBS/Levin Papantonio
White, Steve	MID-L-7061-18	Proceed Surgical Mesh	LMCBS/Hollis Law Firm
Whitfield, Michael Whitfield, Melissa	MID-L-7005-18	Proceed Ventral Patch	LMCBS
Williams, James	MID-L-7006-18	Proceed Ventral Patch	LMCBS/Hollis Law Firm
Williams, Sherman	MID-L-6379-18	Proceed Surgical Mesh	LMCBS/Fleming, Nolen & Jez, LLP
Wilson, Donald Wilson, Bernadette	MID-L-7007-18	Prolene Hernia System	Locks Law Firm
Wolfe, Donna	MID-L-7008-18	Proceed Surgical Mesh	Pogust, Braslow & Milrood & Sanders Phillips Grossman
Wolfe, Patty	MID-L-7009-18	Proceed Surgical Mesh	Pogust, Braslow & Milrood
Woods, Lisa	MID-L-7010-18	Proceed Ventral Patch	LMCBS/Krause & Kinsman

EXHIBIT B

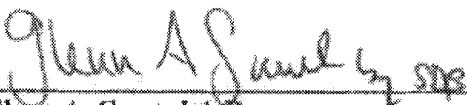
NOTICE TO THE BAR

MULTICOUNTY LITIGATION -- PHYSIOMESH FLEXIBLE COMPOSITE MESH LITIGATION

A previous Notice to the Bar requested comments on an application for multicounty litigation (MCL) designation of New Jersey state-court litigation alleging injuries resulting from use of certain hernia mesh products. This Notice is to advise that the Supreme Court, after considering the application and the comments received, has determined to designate only the cases involving allegations of injuries from use of **Physiomesb Flexible Composite Mesh** as multicounty litigation. The Court has assigned this MCL to Atlantic County for centralized case management by Superior Court Judge Nelson C. Johnson.

Published with this Notice is the Supreme Court's July 17, 2018 Order. This Order is posted in the Multicounty Litigation Center <http://www.njcourts.gov/attorneys/mcl/index.html> on the Judiciary's website (www.njcourts.gov). Judge Johnson's Initial Case Management Order will be posted in the Multicounty Litigation Center once issued.

Questions concerning this matter may be directed to Taironda E. Phoenix, Esq., Assistant Director for Civil Practice, Administrative Office of the Courts, Hughes Justice Complex, P. O. Box 981, Trenton, New Jersey 08625-0981; telephone: (609) 815-2900 ext. 54901; e-mail address: taironda.phoenix@njcourts.gov.



Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: August 15, 2018

SUPREME COURT OF NEW JERSEY

On application made pursuant to Rule 4:38A and the Multicounty Litigation Guidelines promulgated by Directive # 08-12 in accordance with that Rule, it is hereby ORDERED that all pending and future New Jersey state court actions against Johnson & Johnson and Ethicon, Inc., alleging injuries as a result of use of Physiomesh Flexible Composite Mesh be designated as multicounty litigation ("MCL") for centralized management purposes; and

It is FURTHER ORDERED that any and all such complaints that have been filed in the various counties and that are under or are awaiting case management and/or discovery shall be transferred from the county of venue to the Superior Court, Law Division, Atlantic County and that, pursuant to N.J. Const. (1947), Art.VI, sec.2, par.3, the provisions of Rule 4:3-2 governing venue in the Superior Court are supplemented and relaxed so that all future such complaints, no matter where they might be venued, shall be filed in Atlantic County; and

It is FURTHER ORDERED that Superior Court Judge Nelson C. Johnson shall oversee management and trial issues for such cases and may, in his discretion, return such cases to the original county of venue for disposition, and

It is FURTHER ORDERED that no Mediator or Master may be appointed in this litigation without the express prior approval of the Chief Justice.

For the Court



Chief Justice

Dated: July 17, 2018

Civil

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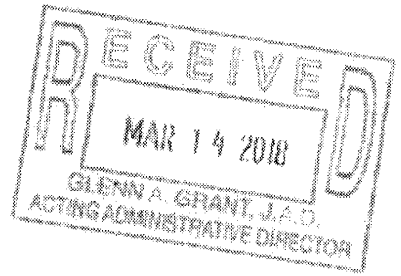
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Reply to Freehold
Dept. Fax - (732) 431-4043

February 28, 2018

VIA REGULAR MAIL

The Hon. Glenn A. Grant, J.A.D.
Administrative Director of the Courts
Administrative Office of the Courts of the State of New Jersey
Richard J. Hughes Justice Complex
25 W. Market Street
Trenton, New Jersey 08625



Re: Application Pursuant to R. 4:38A ("Centralized Management of Multicounty Litigation") Request for Multi-County Litigation Designation for Ethicon Multi-Layered Hernia Mesh

Dear Judge Grant:

The below attorneys and firms submit this letter on behalf of sixty-two Plaintiffs who have cases filed in Bergen County, New Jersey involving one or more Multi-Layered Hernia Mesh products designed, manufactured, marketed, and sold by Defendants, Johnson and Johnson and Ethicon, Inc. (collectively "Defendants").¹ We write to advocate for a Multi-County Litigation designation in accordance with Rule 4:38A. There are dozens, if not hundreds of additional cases involving Defendants' Multi-Layered Hernia Mesh, as described below, which will be filed in the near future. In addition to those cases, our current assessment of firms representing Plaintiffs alleging injuries from hernia mesh products suggests that several hundred more cases involving Defendants' Multi-Layered Hernia Mesh will be filed. Accordingly, MCL designation is appropriate and we respectfully submit that MCL designation before The Honorable Rachelle L. Harz, J.S.C. in Bergen County will conserve resources, reduce cost, eliminate delay, and reduce the likelihood of inconsistent results.

¹ See attached Exhibit A for the complete list of cases.

BACKGROUND

This application addresses the approximately 62 currently pending cases, and any future similar cases filed in the Superior Court alleging that Defendants' Multi Layered Hernia Mesh was defective, and that those defects caused the mesh to fail, resulting in serious injuries and the need for additional medical intervention.

The products referred to throughout this application as "Multi-Layered Hernia Mesh" were all manufactured and sold by Defendants and are all polypropylene-based mesh prosthetics indicated for the repair of hernias, including: Proceed Surgical Mesh, Proceed Ventral Patch, Physiomesh Flexible Composite, Prolene 3D Polypropylene Patch, and Prolene Hernia System. Plaintiffs allege that these products are defective and unsafe for their designed and intended use.

Although Defendants manufacture and sell a wide variety of hernia mesh prosthetics, many of which are made of polypropylene, Defendants' Multi-Layered Hernia Mesh share one important characteristic: all of the subject products feature one or more deviations from an uncoated, two-dimensional polypropylene mesh design, deviations which (1) increase the type and rate of serious complications and (2) were introduced in order to increase sales by making implantation procedures faster, rather than safer or more effective. These Multi-Layered Hernia Mesh also share one or more of the same or similar constituent materials, and are all manufactured and distributed by Defendants.

PROCEED SURGICAL MESH AND PROCEED VENTRAL PATCH

Proceed Surgical Mesh ("Proceed") and Proceed Ventral Patch ("PVP") are hernia mesh products that have been found to *contribute* to adhesion formation by operation of multiple design defects. Defendants knew or should have known that was not an effective adhesion prevention barrier and in fact leads to the formation of adhesions, which can be painful and sometimes life-threatening. Proceed and PVP have an alarmingly high rate of mechanical failure, sometimes described by surgeons as "Proceed rupture".

PHYSIOMESH FLEXIBLE COMPOSITE

The Physiomesh Flexible Composite ("Physiomesh") is marketed as an anti-adhesion barrier mesh, in which the barrier layer that is supposed to prevent scar tissue formation is present on both the side of the mesh which faces the bowel *and* the side which faces the abdominal wall.

Utilizing an anti-adhesion barrier on the side of a polypropylene hernia mesh graft that faces the abdominal wall increases the risk that the graft will not incorporate into the abdominal wall, causing the graft to fold, buckle, and migrate, posing a threat to adjacent organs.

Poliglecaprone is also known to incite an inflammatory response in soft tissue, causing complications. Defendants were aware of this predisposition prior to market launch of the Physiomesb.

In May of 2016, Defendants issued a "Field Safety Notice" relating to the Physiomesb product, to hospitals and medical providers in various countries worldwide. In this Urgent Field Safety Notice, Defendants advise these providers of "a voluntary product recall".

PROLENE 3D POLYPROPYLENE PATCH

The Prolene 3D Polypropylene Patch ("P3D") is a multi-layered, three-dimensional mesh device. This product is often used to repair inguinal hernias and the design contemplates that the mesh acts as a "plug" in the abdominal cavity, while it secures the repair at the anterior abdominal wall. The design of the P3D is problematic. The intense foreign body inflammatory response causes contracture to the tissue and mesh.

PROLENE HERNIA SYSTEM

Prolene Hernia System ("PHS") is a multi-layered, three-dimensional mesh device. Defendants market PHS for both inguinal and ventral hernia repairs. The PHS is intended to minimize the probability of hernia recurrence, but the design results in an intense foreign body inflammatory response which can cause a cascade of injurious complications, including but not limited to profound contracture of the mesh, chronic and debilitating pain, mesh migration and erosion into nearby organs.

COORDINATION IS APPROPRIATE

As set forth in the guidelines, multi-county litigation is warranted when a litigation involves a large number of parties; many claims with common, recurrent issues of law and fact; there is geographical dispersion of parties; there is a high degree of commonality of injury; there is a value interdependence between different claims; there is a degree of remoteness between the court and actual decision makers in the litigation; among other considerations.

This litigation meets the above criteria. There are many common, recurrent issues of law and fact that are associated with this class of products. These products share common Defendants (and likely the same corporate witnesses), designs, materials, manufacturing and production methods, and underlying science. Additionally, there is geographical dispersion of the parties (as these products were sold throughout the nation), a high degree of commonality of injury; and a likely value interdependence among different claims. All of these considerations warrant MCL designation. The same policies and factors which led the Supreme Court to decide on October 12, 2010, that all pending and future Ethicon and J&J pelvic mesh cases should be centralized for management purposes (<https://www.judiciary.state.nj.us/attorneys/mcl/bergen/pelvicmesh.html>), should compel the granting of the instant application.

At least 62 cases have already been filed, and all involve the recurrent legal issues of design defect, failure to warn, breaches of warranties and the possibility of manufacturing defects. There are significant overlapping factual liability issues relating to the selection of the polypropylene and other materials utilized in Defendants' Multi-Layered Hernia Mesh, how it was manufactured and sterilized, the nature of the defect, any delay or failure in recalling the products, failure to comply with good manufacturing practices, and a host of other related factual issues.

Separate discovery demands have been served in many of the cases, including pathology requests necessitating a uniform pathology protocol. MCL designation is appropriate for these cases, and future filed-cases involving Defendants' Multi-Layered Hernia Mesh, as it will allow for efficiencies in discovery that will conserve the resources of the parties and the judicial system.

At the present time, we do not know precisely how many of these products have been implanted in patients in the United States, but publicly available information indicates there are thousands—if not tens of thousands—of these products implanted into US citizens.

BERGEN IS THE MOST APPROPRIATE VENUE

Pursuant to the Mass Tort Guidelines and Criteria for Designation, questions of fairness, the locations of the parties and counsel, and the existing civil and mass tort caseload are considered in determining where to centralize the management of a mass tort case.

Bergen County is the best venue for the consolidation of the Ethicon Multi-Layered Hernia Mesh cases. The previously-filed Ethicon Multi-Layered Hernia Mesh cases are all pending before various judges in Bergen County. Discovery is underway and has been exchanged in several cases. Geographically, the Bergen venue is conveniently located to regional and international airports. Bergen is within driving distance of Defendant Ethicon's headquarters in Somerville, as well as Defendant Johnson & Johnson's headquarters in New Brunswick.

The existing civil and mass tort caseload in the venue is also an important factor in selecting an MCL venue. According to the New Jersey Courts' website, seven MCLs are pending in the Middlesex County Superior Court, five MCLs are centralized in the Atlantic County Superior Court, (including the most recently assigned MCL, the Firefighter Hearing Loss MCL), and seven MCLs are pending in the Bergen County Superior Court. In addition to their non-asbestos MCL docket, Middlesex County also has over four hundred active asbestos cases as well as twenty-seven consumer fraud class actions. In Bergen however, the Stryker Trident Hip Implant Litigation is all but completed, the DePuy ASR Hip Implant litigation announced a global settlement in November 2013, the Stryker Hip/ABG II litigation announced a global settlement in December 2016, and the Pompton Lakes MCL has also recently concluded. The resolution of those matters will reduce the Bergen County MCL caseload significantly.

Additionally, Bergen County Superior Court has gained substantial, relevant knowledge in handling the current and prior pelvic mesh cases, including knowledge regarding these Defendants, the materials, manufacturing and sterilization processes used by mesh manufacturers, and the regulatory processes involved in marketing and recalling such devices.

Judge Rachelle L. Harz, who oversees all MCLs in Bergen County and who has already been assigned 6 of these cases² would be an ideal judge to handle this litigation. Judge Harz has valuable experience, including presiding over the Pelvic Mesh litigation, which involves overlapping science and the same Defendants. Judge Harz has presided over the Pelvic Mesh litigation since it was re-assigned to her in August 2016, and since that time has issued over 300 orders, conducted numerous conferences, and has shown a remarkable understanding of the complex scientific issues of Pelvic Mesh, and their intrinsic interrelationship to the legal issues. Many of these scientific and legal issues will predominate in the Ethicon and J&J Hernia Mesh litigation. Accordingly, by far the most logical and fair procedure for the litigants would be for these cases to remain in Bergen County before Judge Harz.

In light of all the factors discussed above, Plaintiffs respectfully request that the New Jersey Supreme Court designate the Ethicon Multi-Layered Hernia Mesh cases for MCL management in the Bergen County Superior Court before Judge Harz.

Respectfully submitted,

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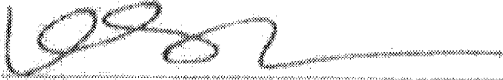
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ADAM EVANS, ESQ.

² Fowler v. Ethicon, Inc., et al., Docket No.: BER-L-8572-17; Dollanmeyer v. Ethicon, Inc., et al., Docket No.: BER-L-774-18; Aaron v. Ethicon, Inc., et al., Docket No.: BER-L-870-18; Lang v. Ethicon, Inc., et al., Docket No.: BER-L-1067-18; Letridge v. Ethicon, Inc., et al., Docket No.: BER-L-1467-18; and Dias v. Ethicon, Inc., et al., Docket No.: BER-L-1471-18.

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ROBERT E. PRICE, ESQ.

JSK/slm
Encl

Co: Kelly S. Crawford, Esq. (via regular mail)
David R. Kott, Esq. (via regular mail)
G. Brian Jackson, Esq. (via regular mail)
Fred E. Bourn, III, Esq. (via regular mail)

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mgalpern@lockslaw.com



MICHAEL GALPERN, ESQ.



JAMES BARRY, ESQ.

EXHIBIT A

Plaintiff	Docket No.	Assigned Judge	Firm
Aaron, Daniel	BER-L-870-18	Rachelle L. Harz	Locks Law Firm
Adams, Donna	BER-L-728-18	Mary F. Thurber	Hollis Law Firm/Lomurro Law Firm
Alexander, Diane	BER-L-1241-18	Robert C. Wilson	Fleming, Nolen & Jez, LLP/Lomurro Law Firm
Alumbaugh, Alan	BER-L-207-18	Gregg A. Padovano	Hollis Law Firm/Lomurro Law Firm
Alvarado, Danny	BER-L-1479-18	Christine A. Farrington	Lomurro Law Firm
Anawaty, Viola	BER-L-1516-18	Walter F. Skrod	Hollis Law Firm/Lomurro Law Firm
Bassett, Richard	BER-L-7836-17	John D. O'Dwyer	Fleming, Nolen & Jez, LLP/Lomurro Law Firm
Bean, Norman	BER-L-198-18	Lisa Perez-Friscia	Fleming, Nolen & Jez, LLP/Lomurro Law Firm
Campbell, Cassandra	BER-L-8998-17	Lisa Perez-Friscia	Hollis Law Firm/Lomurro Law Firm
Capshaw, Clifton	BER-L-1530-18	Mary F. Thurber	Krause & Kinsman/Lomurro Law Firm
Clark, Jeneen	BER-L-691-18	Charles E. Powers	Hollis Law Firm/Lomurro Law Firm
Cottle, Jason	BER-L-7065-17	James J. DeLuca	Hollis Law Firm/Lomurro Law Firm
Crossland, Stephanie	BER-L-729-18	Mary F. Thurber	Hollis Law Firm/Lomurro Law Firm
Denney, Robert	BER-L-732-18	John D. O'Dwyer	Hollis Law Firm/Lomurro Law Firm
Dias, Alessandro	BER-L-1471-18	Rachelle L. Harz	Hollis Law Firm/Lomurro Law Firm
Diloreto, Edward	BER-L-1018-18	Walter F. Skrod	Fleming, Nolen & Jez, LLP/Lomurro Law Firm
Dollanmeyer, Terry	BER-L-774-18	Rachelle L. Harz	Hollis Law Firm/Lomurro Law Firm
Fielding, Chad	BER-L-693-18	Lisa Perez-Friscia	Hollis Law Firm/Lomurro Law Firm
Fontenot, Emily	BER-L-1513-18	Gregg A. Padovano	Hollis Law Firm/Lomurro Law Firm
Fowler, Susie	BER-L-8572-17	Rachelle L. Harz	Fleming, Nolen & Jez, LLP/Lomurro Law Firm
Gaddis, Troy	BER-L-658-18	James J. DeLuca	Hollis Law Firm & Holman Schiavone/Lomurro Law Firm
Galvez, Michael	BER-L-1393-18	Lisa Perez-Friscia	Hollis Law Firm/Lomurro Law Firm
Gateley, Brenda	BER-L-9151-17	Estela M. De La Cruz	Hollis Law Firm/Lomurro Law Firm
Gibson, Renee	BER-L-1110-18	Gregg A. Padovano	Fleming, Nolen & Jez, LLP/Lomurro Law Firm
Gold, Ilene	BER-L-8037-17	John D. O'Dwyer	Pogust, Braslow & Milrood
Griffin, Charles	BER-L-8827-17	Mary F. Thurber	Hollis Law Firm/Lomurro Law Firm
Hart, Dennis	BER-L-1349-18	Estela M. De La Cruz	Hollis Law Firm/Lomurro Law Firm
Hollimon, Thomas	BER-L-694-17	Lisa Perez-Friscia	Hollis Law Firm/Lomurro Law Firm
Jarrell, Sara	BER-L-775-18	Christine A. Farrington	Hollis Law Firm/Lomurro Law Firm
Jennings, Jerry	BER-L-777-18	Christine A. Farrington	Hollis Law Firm/Lomurro Law Firm
Johnson, Steven	BER-L-778-18	Christine A. Farrington	Hollis Law Firm/Lomurro Law Firm
Kennedy, Bryan	BER-L-779-18	Christine A. Farrington	Hollis Law Firm/Lomurro Law Firm
Krampen-Yerry, Denise	BER-L-1466-18	James J. DeLuca	Krause & Kinsman/Lomurro Law Firm
Lang, Christine	BER-L-1067-18	Rachelle L. Harz	Fleming, Nolen & Jez, LLP/Lomurro Law Firm
Lindly, James	BER-L-1402-18	Robert L. Polifroni	Krause & Kinsman/Lomurro Law Firm
Linnenbrink, Christina	BER-L-8829-17	Mary F. Thurber	Hollis Law Firm/Lomurro Law Firm
Lotridge, Robin	BER-L-1467-18	Rachelle L. Harz	Hollis Law Firm/Lomurro Law Firm
Maestas, Joseph	BER-L-1456-18	Estela M. De La Cruz	Hollis Law Firm/Lomurro Law Firm
Martin, Marvin	BER-L-9127-17	Mary F. Thurber	Ogborn Milm, LLP/Lomurro Law Firm
McKinney, Earl	BER-L-780-18	Christine A. Farrington	Hollis Law Firm/Lomurro Law Firm

Miller, Tracee	BER-L-695-18	Lisa Perez-Friscia	Hollis Law Firm/Lomurro Law Firm
Moore, Tammy	BER-L-697-18	Lisa Perez-Friscia	Hollis Law Firm/Lomurro Law Firm
Morgan, Karrie	BER-L-781-18	Christine A. Farrington	Hollis Law Firm/Lomurro Law Firm
Mountjoy, James	BER-L-1480-18	Christine A. Farrington	Lomurro Law Firm
Noakes, Kenneth	BER-L-8276-17	Christine A. Farrington	Fleming, Nolen & Jez, LLP/Lomurro Law Firm
Pikulsky, Jamie Pikulsky, Jeffrey	BER-L-1052-18	Estela M. De La Cruz	Levin Law/Lomurro Law Firm
Redding, Shonna	BER-L-184-18	Charles E. Powers	Hollis Law Firm/Lomurro Law Firm
Reynolds, Burton	BER-L-279-18	Christine A. Farrington	Hollis Law Firm/Lomurro Law Firm
Rice, Melissa	BER-L-197-18	Lisa Perez-Friscia	Hollis Law Firm/Lomurro Law Firm
Robins, Janice	BER-L-809-18	Gregg A. Padovano	Hollis Law Firm/Lomurro Law Firm
Rodriguez, Kelly	BER-L-699-18	Lisa Perez-Friscia	Hollis Law Firm/Lomurro Law Firm
Ruiz, John	BER-L-9130-17	Mary F. Thurber	Hollis Law Firm/Lomurro Law Firm
Schaeffer, Elena	BER-L-914-18	Walter F. Skrod	Hollis Law Firm/Lomurro Law Firm
Schriner, Yesenia	BER-L-1222-18	Walter F. Skrod	Hollis Law Firm/Lomurro Law Firm
Senkel, William	BER-L-1433-18	John D. O'Dwyer	Hollis Law Firm/Lomurro Law Firm
Shackelford, Cecelia	BER-L-1200-18	Lisa Perez-Friscia	Fleming, Nolen & Jez, LLP/Lomurro Law Firm
Smith, Diane	BER-L-652-18	Estela M. De La Cruz	Fleming, Nolen & Jez, LLP/Lomurro Law Firm
Sollis, Jamie	BER-L-703-18	Robert L. Polifroni	Hollis Law Firm/Lomurro Law Firm
Szaroleta, Christopher	BER-L-1458-18	James J. DeLuca	Hollis Law Firm/Lomurro Law Firm
Trebolo, Jr., Walter	BER-L-9133-17	John D. O'Dwyer	Hollis Law Firm/Lomurro Law Firm
Usey, Christina	BER-L-1244-18	Robert C. Wilson	Fleming, Nolen & Jez, LLP/Lomurro Law Firm
Westerbeck, Mike	BER-L-733-18	John D. O'Dwyer	Hollis Law Firm/Lomurro Law Firm

EXHIBIT C

ILENE GOLD, et al. v. JOHNSON & JOHNSON, et al. -- September 28, 2018

Sheet 1

SUPERIOR COURT OF NEW JERSEY
BERGEN COUNTY
LAW DIVISION, CIVIL PART
DOCKET NO. BER-L-8037-17
APP. DIV. NO.

ILENE GOLD, ET AL.)	
)	
Plaintiff,)	TRANSCRIPT
)	of
vs.)	MOTION
)	
JOHNSON & JOHNSON AND)	
ETHICON,)	
)	
Defendants.)	

Place: Bergen Co. Courthouse
10 Main Street
Hackensack, NJ 07601

Date: September 28, 2018

BEFORE:

HONORABLE RACHELLE LEA HARZ, J.S.C.

TRANSCRIPT ORDERED BY:

JOSHUA S. KINCANNON, ESQ. (Lomurro, Munson, Comer,
Brown & Schottland, LLC, Monmouth Executive Center,
4 Paragon Way, Ste. 100, Freehold, New Jersey 07728)

Transcriber Brandy Winow
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ILENE GOLD, et al. v. JOHNSON & JOHNSON, et al. -- September 28, 2018

Sheet 2

APPEARANCES:

JOSHUA S. KINCANNON, ESQ. (Lomurro, Munson, Comer,
Brown, & Schottland, LLC.)
Attorney for the Plaintiff
JAMES BARRY, ESQ. (Locks Law Firm)
Attorney for the Defendant
DAVID R. KOTT, ESQ. (McCarter English, LLP.)
Attorney for the Defendants
KELLY CRAWFORD, ESQ. (Riker, Danzig, Scherer,
Hyland, & Perretti LLP.)
Attorney for the Defendants
KELSEY L STOKES, ESQ. (Fleming, Nolen, & Jez, LLP.)
Attorney for the Defendants
ADAM EVANS, ESQ. (Hollis Law Firm)
Attorney for the Defendants
JEAN P. PATTERSON, ESQ. (McCarter English, LLP.)
Attorney for the Defendants
CHRISTOPHER A. ROJAO, ESQ. (McCarter English, LLP.)
Attorney for the Defendants

I N D E X

3

	Page
RE: MOTION	4
ARGUMENT	
By Mr. Kincannon	7, 20
By Mr. Kott	15
THE COURT	
Motion Granted	26

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Sheet 3

4

GOLD VS. ETHICON

1 THE COURT: This is BER-L-8037-17, we just
2 have it under, HERNIA MESH VS. ETHICON AND JOHNSON &
3 JOHNSON. Fair statement, that's how the caption should
4 read right now?
5 MR. KINCANNON: The caption -- I think we
6 filed -- well, there are -- there are 109 of these
7 motions.
8 THE COURT: Right.
9 MR. KINCANNON: The first one filed was
10 COTTLE (phonetic).
11 THE COURT: Uh-huh.
12 MR. KINCANNON: That's the first filed case.
13 So, that's what we had done and look to file our
14 omnibus objection under. We ended up filing it under
15 all of them. So, I know it's --
16 THE COURT: Okay. But for purposes of today
17 we'll use Docket Number 8037-17, but every one
18 understands what it encompasses.
19 MR. KINCANNON: Perfect. Thank you, Your
20 Honor.
21 THE COURT: Okay. Thank you. So, let's have
22 appearances by plaintiff's counsel.
23 MR. KINCANNON: Good morning, Your Honor.
24 I'm Josh Kincannon from the Lomurro law firm.
25 MR. BARRY: James Barry, Your Honor, from the

5

GOLD VS. ETHICON

1 Locks law firm.
2 MR. KOTT: David Kott, K-O-T-T, from McCarter
3 and English, LLP.
4 MS. CRAWFORD: Kelly Crawford, Riker, Danzig,
5 Scherer, Hyland, and Perretti also for the defendant.
6 THE COURT: Thank you. Does anyone else here
7 wish to put their appearances on the record?
8 MS. STOKES: Yes, Your Honor. My name is
9 Kelsey Stokes from Fleming, Nolen, and Jez out of
10 Houston.
11 MR. EVANS: Adam Evans from the Hollis law
12 firm out in Prairie Village, Kansas.
13 THE COURT: From where?
14 MR. EVANS: Prairie Village, Kansas.
15 THE COURT: Wow. How did you get here? It
16 was a long way.
17 MR. EVANS: United.
18 MS. PATERSON: Good morning, Your Honor.
19 Jean Patterson from McCarter English.
20 THE COURT: Hi. How are you?
21 MR. ROJAO: Good morning Your Honor. Chris
22 Rojao from McCarter and English.
23 THE COURT: Thank you. Anyone else? I have
24 read all the papers and I've -- I've thoroughly read
25 them and thought about this issue. I think it's

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GOLD VS. ETHICON

1 important to state that I am acting today as Judge
2 Mizdol's -- Mizdol's designee.
3 Judge Mizdol signed an order on September
4 24th, 2018 indicating this matter having been open to
5 the court by defendant seeking change of venue from
6 Bergen County to Somerset County. And upon notice to
7 plaintiffs pursuant to Rule 4:3-3(a) and for good cause
8 shown it's on this 24th day of September, 2018 order
9 the Honorable Rachele Lea Harz, J.S.C. is hereby
10 appointed designee of the assignment judge to hear and
11 determine the application for change of venue in
12 accordance with Rule 4:3-3(a) signed by the Honorable
13 Bonnie J. Mizdol assignment judge of the Superior Court
14 here in Bergen County.
15 So, I sit here with unique (Indiscernible)
16 privileged rare opportunity to hear a motion to change
17 venue as the assignment judge.
18 Before we start oral argument, and I
19 recognize it's the motion of defense counsel, can I
20 just ask plaintiff's counsel, after having read all
21 your papers, it would appear as though your position is
22 that any county in New Jersey would be appropriate.
23 Because based upon your understanding of the law and
24 the court rules since Ethicon does business, according
25 to your definition of doing business, in every county

GOLD VS. ETHICON

1 then you could file these cases in Cape May. You could
2 file it any county in New Jersey. If I understand the
3 premise of your argument.
4 MR. KINCANNON: Yes. Your Honor, looking at
5 the venue rule on the rule about where they're actually
6 conducting business if we look at that and look at
7 these defendants and try and analyze whether they're
8 actually doing business in any of these counties
9 sufficient to satisfy that -- that phrase in the venue
10 rule, I think it's manifest that they are.
11 And I think we can touch on the policy of
12 that, right, the reason that it says that you have to
13 actually being doing business there is so that the
14 defendant has some reasonable foreseeability that if
15 they make those contacts with that venue that it's
16 foreseeable that they may be hailed into court there.
17 THE COURT: Isn't that a jurisdictional
18 argument that you just made?
19 MR. KINCANNON: Well, --
20 THE COURT: You know, hailing into court,
21 contacts, that -- that's -- that's a jurisdictional
22 motion.
23 MR. KINCANNON: But generally speaking with
24 regard to the phrase, actually doing business there,
25 cases cited by defendant, CREPY, BUCKLU (phonetic), and

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GOLD VS. ETHICON

1 others, describe the reason behind saying, actually
2 doing business there, as opposed to just principle
3 place of business. And that's because if they are
4 doing business there, it's reasonable to expect that
5 they may be hailed into the court there.

6 So, for venue purposes we laid venue here
7 because these are giant companies that do business
8 throughout the State of New Jersey. Venue is proper
9 here. This is a Fortune 500 company with 250
10 subsidiaries. They sell products all over the world,
11 all over the country, all over the State, and in Bergen
12 County. Ethicon sells 440 different medical devices.
13 They sell them in New Jersey. They sell them in Bergen
14 County. Bergen County is the most populist county in
15 the State. We have the largest hospital in the State
16 here.

17 Johnson & Johnson makes band-aids and
18 Tylenol. There's no -- if you look at their papers,
19 nowhere in their papers does the following sentence
20 exist, Johnson & Johnson and Ethicon do not do business
21 in Bergen County.

22 THE COURT: But they conceded that.

23 MR. KINCANNON: So, if they're doing business
24 here, then venue is proper here.

25 THE COURT: But so, an answer to my question

GOLD VS. ETHICON

1 venue could be proper anywhere in the State of New
2 Jersey.

3 MR. KINCANNON: I would think so. Yes, Your
4 Honor.

5 THE COURT: So, -- okay. So, then you chose
6 Bergen County, and I thank you for the compliment, you
7 -- you indicated in your papers that I had handled
8 pelvic mesh and you thought that I personally had
9 familiarity with the product and, therefore, it seemed
10 like a good fit.

11 MR. KINCANNON: Well, Your Honor, correct.
12 We get to pick -- the State -- we pick -- well, the
13 court picks the State really. The defendant's location
14 where we can sue or we could sue in federal court as a
15 one-off in plaintiff's home jurisdiction.

16 If we look at that, I think it answers your
17 question in part. If we bring -- if a one-off case in
18 a federal court, we're now forced with litigating this
19 entire thing along and educating a judiciary that
20 probably has no experience with polypropylene pelvic
21 mesh --

22 THE COURT: You lost me on that. Why would
23 you just bring one case in federal court?

24 MR. KINCANNON: Well, I'm saying we have
25 plaintiffs from out-of-state. So, those plaintiffs

GOLD VS. ETHICON

1 they have two choices.

2 THE COURT: Oh, oh, so --

3 MR. KINCANNON: You can file in defendant's
4 backyard here in New Jersey or we could file in federal
5 court, but federal court really is not practically
6 availing. And especially in light of what's really the
7 elephant --

8 THE COURT: Ok-- okay. I understand now.
9 Okay. Because there's no MDL for these products.

10 MR. KINCANNON: That's correct.

11 THE COURT: Okay.

12 MR. KINCANNON: And so, I think we would be
13 remiss to ignore the fact that this Court has handled
14 polypropylene pelvic mesh cases against these same
15 defendants for years. It's a different product, but
16 there is substantial overlap. This is extruded woven
17 polyethylene mesh that is put into the abdomen, that's
18 what this mesh is.

19 We would be remiss as attorneys if we did not
20 consider the fact that this Court and Your Honor is
21 probably one of the top five courts in the entire world
22 in terms of the knowledge of polypropylene pelvic mesh
23 and these two defendants.

24 So, bringing it here in Bergen recognizes the
25 tremendous convenience and efficiencies that will be

GOLD VS. ETHICON

1 achieved by being here.

2 THE COURT: But that same argument was
3 rejected by Judge Grant and he gave physiomesh to
4 Atlantic. I mean, I understand what you are saying,
5 but that's not how venue is picked or how selection of
6 counties are picked. I mean, that, in essence, is
7 almost like judge shopping.

8 Because -- well, let's look at a perfect
9 example Judge Higby (phonetic) at pelvic mesh in
10 Atlantic County, right, and she was extraordinarily
11 knowledgeable about pelvic mesh. She was elevated to
12 Appellate Division and then all those cases came Judge
13 Martinotti who nothing about pelvic mesh. And then he
14 had it for two years and then he went to the federal
15 court and then I took over the docket and at the time I
16 knew nothing about pelvic mesh.

17 So, while I understand you're indicating the
18 Court has this knowledge that is not a factor in
19 determining where cases go because where judges go is a
20 moving element and there's no guarantee that a judge
21 won't be transferred to a different county, or have a
22 different assignment, or retire for that matter, or go
23 to the Appellate Division, or go to federal court.

24 So, while that's an understandable idea in
25 practicality it doesn't work that way, but that's not

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GOLD VS. ETHICON

1 how cases are assigned or designated. That's not how
2 venue is chosen or how it -- an MCL assignment is
3 chosen.

4 MR. KINCANNON: I understand. And I agree
5 Your Honor, but I believe that if they do business, as
6 -- as we've talked about earlier, in every county in
7 New Jersey, then plaintiff is permitted to choose and
8 plaintiff is permitted some modicum of deference in
9 their choice and if we agree that they can be brought
10 in any county, this was plaintiff's choice. And so,
11 they do business here, venue is proper, there is no
12 viable argument of inconvenience.

13 Let's look at the other alternative, right,
14 they would have you send this to Somerset. That's
15 forum shopping, Your Honor. That would be sending us
16 to a court that would -- it would create a substantial
17 amount of delay. And the convenience that they allude
18 to it's really kind of a red herring.

19 They talk about documents and witnesses being
20 available there, but as a practical matter that's not
21 how this plays out. No witnesses will be produced at
22 the offices of Ethicon for plaintiff's counsel to
23 depose. Depositions have been taken in the Ethicon
24 hernia mesh litigation in the MDL the same witnesses
25 we'll seek to depose. None of those depositions

GOLD VS. ETHICON

1 occurred in Somerset County.

2 THE COURT: Are you involved in the MDL?

3 MR. KINCANNON: I am not involved in the MDL.
4 We have a cases -- I lost my train of thought.

5 THE COURT: I'm sorry.

6 MR. KINCANNON: That's okay. About Somerset
7 County --

8 THE COURT: You were talking about the
9 convenience.

10 MR. KINCANNON: Oh, --

11 THE COURT: The convenience factors.

12 MR. KINCANNON: -- the convenience, right.

13 So, the convenience of the parties and the delay that
14 would be inherent in the transfer of this that is a --
15 it's a judiciary that is not as sizeable or as used to
16 complex administration as -- as this Court is. And --
17 and this Court has been able to resolve and move
18 dockets along.

19 These are all things that we may consider,
20 but the bottom line is that venue is proper here. And
21 the alternative sending it to Somerset County, that's --
22 -- where they would have it, that's defendant's
23 backyard. They've got 2,400 employees there. They've
24 got untold thousands of people that tangentially derive
25 a benefit from those defendants and those employees in

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GOLD VS. ETHICON

1 that county.
2 So, if venue --
3 THE COURT: So, you're concerned about the
4 resources of -- of a particular county.
5 MR. KINCANNON: And -- and I'm concerned
6 about the jury pool. And if venue is proper here and
7 there's a court here that -- and defendants are
8 presents litigating thousands of polypropylene pelvic
9 mesh cases in this court currently, it just seems to us
10 that it would be -- we wouldn't be doing our jobs if we
11 didn't recognize that there is overlap with experts,
12 with the discovery, with the protective order we're
13 negotiating I'm working off the TBM protective order
14 draft.
15 All of these things that have already been,
16 in some cases, litigated before Your Honor and -- and
17 we know defendants can live with them because they're
18 moving forward under those orders. And we've -- are
19 looking to see if we can live with them too. We can
20 move this litigation very expeditiously because so much
21 of the work has been done here already.
22 To reinvent that wheel is simply unnecessary
23 because venue is proper here. And there's no real
24 showing of inconvenience on the part of defendants.
25 THE COURT: Why don't I hear from the moving

GOLD VS. ETHICON

1 party.
2 MR. KINCANNON: Thank you, Your Honor.
3 THE COURT: (Indiscernible).
4 MR. KOTT: Thank you, Your Honor. This our
5 motion to transfer venue from Bergen to Somerset
6 County. And I think there are three issues before the
7 Court. The first issue, which I'll address first, is
8 whether for the convenience of the parties venue should
9 be transferred.
10 Here is what's in the record on that. And
11 what I'm going to now give comes from the complaints
12 filed by the plaintiffs.
13 None of the plaintiffs reside in Bergen
14 County. Of the 109 motions that are pending 107 live
15 in some other State. One plaintiff lives in Essex, one
16 plaintiff lives in Monmouth. So, that's where the
17 plaintiffs are from.
18 None of the events giving rise to the
19 litigation occurred in Bergen County. There are no
20 witnesses in Bergen County, there's no evidence in
21 Bergen County. Plaintiffs acknowledge in the complaint
22 that Ethicon is located in Somerset County and that the
23 other defendant Johnson & Johnson is located in
24 Middlesex County.
25 I recognize that the Court gives deference to

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GOLD VS. ETHICON

1 the plaintiff's choice. However, the Appellate
2 Division has said as has the Supreme Court that when
3 the plaintiffs are not from the county of venue, their
4 choice of venue is entitled to less deference. And
5 that's what the Supreme Court has said.

6 Plaintiffs in their papers rely on two cases.
7 One is DI DONATO (phonetic), that's an Appellate
8 Division decision where the Appellate Division actually
9 granted leave to appeal on a motion to transfer venue.
10 In DI DONATO the plaintiff was rendered a quadriplegic.
11 He lived in Middlesex County.

12 THE COURT: He couldn't travel.

13 MR. KOTT: He couldn't travel.

14 THE COURT: I read that.

15 MR. KOTT: His -- his eyewitnesses --
16 eyewitnesses to the accident were from Bergen County.
17 And the Court did all of the measuring and sent the
18 Middlesex County quadriplegic to Camden County.

19 The other case the plaintiffs relies is
20 OTINGER (phonetic), which is a decision of Judge Doin
21 (phonetic), on a motion like this motion to transfer
22 from Bergen to Somerset County. The defendants were in
23 Somerset County. Judge Doin --

24 THE COURT: They were government officials.

25 MR. KOTT: They were. However, both in DI

GOLD VS. ETHICON

1 DONATO and OTINGER the Court said that ordinarily and
2 the Court will require is the venue be where the
3 governmental agency is, but nevertheless we're going to
4 go through the analysis of where it's convenient to be
5 because we can choose to not follow that aspect of the
6 court rule. So, both in DI DONATO and in OTINGER the
7 Court went through the analysis and Judge Doin
8 concluded that because the defendants were in Somerset
9 the case should be litigated in Somerset.

10 Here is what the plaintiffs say. The
11 plaintiffs say that it would be convenient to litigate
12 here because it's close to major airports, because it's
13 within the driving distance of both Ethicon and
14 Somerset and J&J in Middlesex, and because Your Honor
15 had the pelvic mesh MCL.

16 Ordinarily you decide a case and then it goes
17 to the Appellate court and you get affirmed or
18 reversed. This is unique, you already have the Supreme
19 Court telling you what to do on this. And what I mean
20 by that is those three arguments were exact arguments
21 the plaintiffs made in their MCL designation under
22 physiomesh MCL, close to the airports, driving distance
23 to Somerset and Middlesex, we have a judge here who has
24 extensive experience with mesh products and Ethicon.
25 And the Supreme Court said, we're not going to assign

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GOLD VS. ETHICON

1 the cases to Bergen County.

2 The plaintiffs also do not address in their
3 papers Judge Polifroni's January 25th, 2018 letter in
4 which he noted that in his words, "the most convenient"
5 venue for this -- these lawsuits is where the corporate
6 defendants have their principle offices. And then he
7 said, which is not in Bergen County. So, this Court
8 should grant the motion to transfer to a more
9 convenient venue.

10 Second issue, is venue proper? That's what
11 the Court addressed to Mr. Kincannon in the opening
12 colloquy. Court rule says plaintiffs can sue wherever
13 somebody resides. Court rule says the corporate
14 resides wherever it is, "actually doing business".

15 And we have the CREPY decision, and I may be
16 mispronouncing it. But in CREPY the Court had a
17 situation similar to this. Defendant is from Morris
18 County, plaintiff sues in Essex County. The defendant
19 actually has 332 sales calls in Essex County. The
20 defendant actually has sales in Essex County. The
21 defendant actually has advertising and marketing which
22 enters Essex County. All of which Mr. Kincannon just
23 said why we do business. And even accepting all of
24 that as the CREPY court did, the CREPY court said
25 that's not enough to impose venue.

GOLD VS. ETHICON

1 I'm not sure that Your Honor needs to reach
2 whether venue is proper because Your Honor can choose
3 to transfer venue based on the inconvenience of venue
4 and then not reach that issue. However, if Your Honor
5 reaches it, CREPY is directly on point and venue is not
6 proper here.

7 Finally, and I'm going to slow down a little,
8 there's a --

9 THE COURT: No, I'm following. I'm good.

10 MR. KOTT: Well, no, because we're getting to
11 something that's sensitive, the waiver argument. And
12 I'll spend time on that. But let --

13 THE COURT: I don't think it's really
14 necessary. I don't think you -- I mean, are you really
15 pushing that? I mean, I'm aware of the time line of
16 what occurred. I'm aware of Judge Polifroni's letter
17 in January. I have -- I have it right here. I mean,
18 they're on notice at that point. Counsel had
19 conversations you thereafter have your consent order.

20 But regardless of anything you still kept
21 filing in Bergen County. I mean, you're trying to
22 argue that there's waiver for the nu-- for the cases
23 prior to the consent order. I mean, in light of Judge
24 Polifroni's order you knew January 25th, 2018 that
25 venue wasn't guaranteed here.

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GOLD VS. ETHICON

1 MR. KINCANNON: I understand that Judge
2 Polifroni wrote that in what I would consider kind --
3 that's not an order, that's not opinion, and it's not --
4 - he's not basing it on any briefing or argument we've
5 made to try and support Bergen County. That's -- we
6 had asked him, how should we do this? Would you like
7 us to consolidate, should we do an MCL? We wrote the
8 letter saying, how would you like us to proceed and
9 that was his response.

10 In terms of the ten-day waiver just as point
11 of clarification. I didn't bring it up in my initial
12 thing. I don't think that's where we're going to end
13 up hanging our hat on this issue. But the fact of the
14 matter is the venue rules say that if you want to
15 transfer venue and object to plaintiff's pick, you have
16 ten days do it after you answer. They didn't do that.
17 Not once, not twice, they didn't do it 57 times they
18 didn't do it, Your Honor.

19 And then after the fact then they came to us
20 and said, hey, we're going to file motions for venue.
21 And we said, well, these have all expired. And they
22 said, well, there are newer ones that you've just filed
23 that haven't expired yet. So, instead of us filing all
24 of these motions to venue let's just enter into a
25 consent order then we'll do the venue after the MCL.

GOLD VS. ETHICON

1 And we agreed so that we wouldn't burden the Court with
2 venue motions that might be moot.

3 THE COURT: But the -- if these cases are
4 going to be moved as the acting assignment judge for
5 this motion, I'm certainly not going to carve out the
6 57 cases you're referring to and then the remaining
7 cases having to do with hernia mesh other than
8 physiomesh go elsewhere. I mean, that's -- that's
9 really impractical.

10 MR. KINCANNON: I agree and I -- I think that
11 -- that's just another reason why the cases should stay
12 in Bergen. Because under the rules 57 of these cases
13 are not this -- this motion is not timely for them.
14 And the word in the rule is, waived. They have waived
15 the right to bring this motion in 57 of these cases.

16 THE COURT: But you're assuming that the
17 presiding judge here and Judge Mizdol didn't notice
18 that you filed the number that you filed involving
19 these products here in Bergen County with no nexus to
20 Bergen County. I mean, you're assuming that.

21 MR. KINCANNON: I'm not sure I understand --
22 what I'm doing is fi--

23 THE COURT: I mean, they at any time can sua
24 -- Judge Mizdol sua sponte. And that is not related to
25 this. Our assignment judge has had to do that where

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GOLD VS. ETHICON

1 plaintiff's counsel just filed cases in Bergen County
2 and there's no nexus to Bergen County. And sua sponte
3 --

4 MR. KINCANNON: Sure.

5 THE COURT: -- she has the power, makes the
6 decision to transfer to the appropriate venue. So,
7 you're -- you're argument has the premise that that
8 would never have occurred. I mean, it was noticed that
9 all these cases were being filed here by my
10 (Indiscernible).

11 MR. KINCANNON: Right, but at that time many
12 of their cases and the timeliness of their objection
13 had already expired.

14 THE COURT: I understand that, but what I'm
15 saying is --

16 MR. KINCANNON: Oh.

17 THE COURT: -- putting that aside you're
18 argument assumes that Judge Mizdol would never have
19 said, this venue isn't appropriate I'm not keeping
20 these cases here in Bergen County.

21 MR. KINCANNON: I understand, Your Honor.

22 THE COURT: Right.

23 MR. KINCANNON: But our argument would be the
24 same as it was at the beginning here, which is that if
25 we were allowed to present our case to Judge Mizdol,

GOLD VS. ETHICON

1 venue is proper and it's not inconvenient to the
2 parties to litigate here.

3 That's the key here, venue is proper. When
4 we say things like, no nexus to Bergen County --

5 THE COURT: There is no nexus to Bergen
6 County. What's the nexus?

7 MR. KINCANNON: They do business here and
8 that's the rule.

9 THE COURT: Well, the cases have no nexus
10 here. None -- none of the plaintiffs are from Bergen
11 County.

12 MR. KINCANNON: But the cases --

13 THE COURT: The implanting was not done here.
14 The treatment was not done here. I mean, that's --
15 that's the nexus for the case.

16 MR. KINCANNON: But those -- but what the
17 rule says is that if they're doing business here, we
18 can get venue here.

19 THE COURT: Oh, I understand that --

20 MR. KINCANNON: And -- and -- I'm sorry, I
21 just wanted to clarify that the exact thing that we're
22 suing for is what they're doing business for. If you
23 want to distinguish CREPY, CREPY was a wrongful
24 termination case where he brought suit in a different
25 venue and that venue had no connection at all to his

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GOLD VS. ETHICON

1 wrongful termination case.

2 This venue is connected because they derive
3 substantial revenue out of Bergen County. So, they are
4 doing business here. Our claims are with regard to
5 the business that they are doing here.

6 THE COURT: No, in CREPY there was doing
7 business in that other county.

8 MR. KINCANNON: But not related to his
9 wrongful termination claim. His claim, his tort was a
10 unicorn compared to their connections to the venue.
11 Here our --

12 THE COURT: That's what I'm saying, there's
13 no nexus. You're claim has no nexus to Bergen County.
14 The implantation, the damage, the injury didn't occur
15 here in Bergen.

16 MR. KINCANNON: We agree that the damage and
17 injuries did not occur here.

18 THE COURT: Right.

19 MR. KINCANNON: But -- but really our
20 analysis is, are they doing business here? That's the
21 rule, that's the analysis and they've conceded they're
22 doing business here.

23 So, if we concede that that venue is proper
24 laid in Bergen County by virtue of 432 and defendants
25 doing business here, then we're talking about the

GOLD VS. ETHICON

1 convenience issue and -- and, you know, we still have
2 those 57 cases where they're not even supposed to be
3 able to bring this motion.

4 So, to your point, look, I'm not going to
5 bifurcate these (Indiscernible) send half of them to
6 Somerset and say 57 have to leave here.

7 THE COURT: That -- that definitely I --

8 MR. KINCANNON: I wouldn't ask you that. I
9 would argue it the other way that that means that these
10 cases should stay here for all of those reasons. 57 of
11 them can't go anywhere because the rule says they can't
12 bring this motion.

13 And the others there has been no showing of
14 inconvenience, no real showing of inconvenience. They
15 can talk about 12 miles versus 8 miles, but as a
16 practical matter we're going to get documents and hard
17 drives in the mail. We're going to take depositions
18 outside of Somerset County. There is no burden on
19 anyone going to Somerset County except plaintiffs.

20 Now, if we go to Bergen, there's no palpable
21 prejudice to these defendants. If anything, their
22 cases will move faster. This will be more expeditious.

23 THE COURT: All right. Mr. Kott, would you
24 wish to add anything?

25 MR. KOTT: Unless the Court has questions for

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GOLD VS. ETHICON

1 me, no, Your Honor.

2 THE COURT: Okay. I want you to know I've
3 given a lot of thought to this motion. And I have read
4 the papers. I have read all the -- the cases actually
5 that you have cited and the exhibits.

6 As you will see as my decision is put on the
7 record I am granting the application, but I am granting
8 the application in part because as the assignment judge
9 making the decision of this motion and given the
10 concerns that plaintiffs raise of resources and
11 staffing the appropriate venue is going to be
12 Middlesex. Because Middlesex certainly has the
13 staffing and resources and actually quite obviates a
14 lot of the concerns that plaintiffs set forth in their
15 papers regarding Somerset. But I'll put every thing on
16 the record now.

17 I've already placed on the record the fact
18 that Judge Mizdol has by order dated September 24, 2018
19 appointed this court to hear and determine the
20 application for change of venue is a matter presently
21 before us.

22 Before this Court motions to change venue by
23 the defendants from Bergen County to Somerset County
24 regarding 109 cases has been fully briefed and we've
25 had oral argument. Although this only involves 109

GOLD VS. ETHICON

1 cases this decision pertains to all cases filed by the
2 plaintiffs against the defendants pertaining to
3 personal injury product liability claims concerning
4 hernia mesh other than physiomesh. And
5 parenthetically, clearly, physiomesh products are all
6 being heard in Atlantic County as an MCL.

7 As -- as -- as background it is necessary to
8 the put the following on the record. Plaintiffs,
9 except for two, reside outside the State of New Jersey.
10 None live in Bergen County.

11 The complaints allege that plaintiffs were
12 injured as a result of an Ethicon hernia mesh product
13 that was implanted after plaintiffs underwent hernia
14 repair surgery. Plaintiffs sued defendants Ethicon and
15 Johnson & Johnson in Bergen County alleging that they
16 were involved in the manufacture, design, and/or
17 distribution of the product that allegedly caused
18 injury to the plaintiff.

19 Neither the hernia repair surgery nor the
20 alleged injury occurred in Bergen County. Plaintiffs
21 do not reside in Bergen County. The manufacturer of
22 the product, Ethicon, is not located in Bergen County.
23 Ethicon is located in Somerset County. The other
24 defendant in this action, Johnson & Johnson, is located
25 in Middlesex County.

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1 On January 11, 2018 counsel representing
2 plaintiffs in product liability cases involving hernia
3 mesh products against Ethicon and Johnson & Johnson
4 together with many other plaintiffs' law firms wrote to
5 the Honorable Robert L. Polifroni to request an early
6 case management conference to discuss to consolidate
7 the cases for discovery or an MCL application.

8 By letter dated January 25, 2018 Judge
9 Polifroni rejected plaintiff's informal attempt to
10 achieve MCL designation in Bergen County and reminded
11 plaintiff's counsel of the New Jersey MCL application
12 process. In this letter Judge Polifroni explained that
13 decisions by counsel to select a county of venue and
14 then request to have the matters consolidated and
15 handled by one judge outside the MCL format will not be
16 validated by this Court.

17 Judge Polifroni also noted that unless the
18 individual plaintiffs live in Bergen County it seems
19 unreasonable -- excuse me. It seems reasonable that
20 the most convenient venue would be the corporate
21 location of the defendants, which appears to be outside
22 of Bergen County.

23 Regardless of this letter plaintiff's counsel
24 continued to file hernia mesh lawsuits against
25 defendants in Bergen County even though Bergen County

GOLD VS. ETHICON

1 has no nexus to the parties or their suit's
2 allegations.

3 On February 28th, 2018 plaintiff's counsel
4 filed a Rule 4:38(a) MCL application with the AOC. The
5 AOC issued a notice requesting comments or objections
6 to plaintiff's counsel's MCL application by May 14,
7 2018. Defendants responded to plaintiff's MCL
8 application.

9 While the application was pending the parties
10 did enter into the consent order extending time for
11 defendants to file motions to transfer venue in all
12 Bergen County Ethicon hernia mesh cases. The consent
13 order extended the time for defendants to file said
14 motions for change of venue until 30 days after the AOC
15 issued its ruling on the MCL application.

16 On August 15, 2018 the Honorable Glen Grant
17 (phonetic) issued a another notice to the bar advising
18 that the Supreme Court determined to designate cases
19 involving allegations from use of physiomesh flexible
20 composite mesh as multi-county litigation and rejected
21 plaintiff's request for MCL litigation for hernia mesh
22 cases that did not involve physiomesh. Defendants now
23 file this motion here in Bergen to transfer venue from
24 Bergen to Somerset.

25 Pursuant to Rule 4:3-3(a)(1) the Court may

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GOLD VS. ETHICON

1 also order a change of venue if the venue is not laid
2 in accordance with Rule 4:3-2. That rule provides in
3 pertinent part, that venue is properly laid in the
4 county in which the cause of action arose or in which a
5 party to the action resides at the time of its
6 commencement. That's Rule 4:3-2(a)(3).

7 For purposes of venue a corporation is deemed
8 to reside in the county in which it is registered
9 office is located, or in any county in which it is
10 actually doing business.

11 In CREPY VS. RECKITT, R-E-C-K-I-T-T,
12 BENCKISER, B-E-N-C-K-I-S-E-R, LLC., 448 NJ Super 419
13 it's a reported Law Division case of 2016, the trial
14 court concluded that the term actually doing business
15 requires a level of business activity by a corporate
16 defendant in the county of venue that exceeds merely
17 conducting incidental or minimal business such as
18 ordinary advertising or marketing.

19 The Court noted that the plaintiff failed to
20 show how the defendant business activities were
21 specifically targeted toward Essex County in ruling
22 that the action should be transferred to Morris County
23 where the defendant's New Jersey office was located.
24 The Court required more than general business activity
25 to be performed in the form venue even though the

GOLD VS. ETHICON

1 defendant derived venue from that activity.

2 After CREPY a subcommittee of the New Jersey
3 Supreme Court Rules Committee drafted a proposed
4 amendment to Rule 4:3-2 which the committee stated was
5 a clarification of the rule -- venue rule consistent
6 with CREPY.

7 The proposed amendment read, B, business
8 entity. For purposes of this rule a business entity
9 shall be deemed to reside in the county in which its
10 principle office in New Jersey is located or if it has
11 no office in the New Jersey in the county in which it
12 was the most significant contacts.

13 This proposed rule embraced the rationale set
14 forth in CREPY and the intended meaning of, actually
15 doing business, found in the New Jersey court rules.

16 This Court notes the Supreme Court Rules
17 Committee did not adopt a rule change, but decided to
18 let case law develop to provide guidance on the issue.
19 That is exactly what this Court is doing now in
20 adjudicating this motion in accordance with the
21 principles articulated in CREPY and with the proposed
22 amendment.

23 When a motion to change venue is made under
24 Rule 4:3-3(a)(1) for improper venue, the respondent
25 which is here the plaintiff, has the burden of

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1 demonstrating good cause for not making the change.
2 This is set forth in our current New Jersey court
3 rules, PRESSLER (phonetic) and VENERO (phonetic), Rule
4 4:3-3 2018 edition.

5 The court rules instruct that motions for
6 change of venue on the ground that venue was not
7 properly laid should be routinely granted unless the
8 party resisting the change makes a showing that a fair
9 and impartial trial could not be had in the proper
10 county or that the convenience of the parties and
11 witnesses and the interest of justice justifies trial
12 in a county other than the one where venue should have
13 been laid.

14 Therefore, here defendants challenge improper
15 venue based on a failure to follow Rule 4:3-2 and
16 plaintiffs have the burden to demonstrate good cause to
17 resist transfer to the venue designated by defendants.

18 Plaintiff has failed to establish that venue
19 is proper in Bergen County. Ethicon headquarters are
20 in Somerville, Somerset County. That is where the ma--
21 that is where the majority of Ethicon's activities and
22 New Jersey business is conducted and where Ethicon's
23 business activities are targeted in this State.
24 Likewise Johnson & Johnson's principle New Jersey
25 office is in Middlesex County which is where the

GOLD VS. ETHICON

1 majority of its business is conducted in this State.

2 Accordingly, pursuant to Rul 4:3-2, and the
3 principles articulated in CREPY, as well as the
4 proposed amendment clarifying the rule consistent with
5 CREPY venue is not properly laid in Bergen County.

6 This Court finds plaintiff cannot claim any
7 prejudice due to any perceived delay. The -- an
8 assignment judge or his or her designee, which is this
9 Court, may order the change of venue pursuant to Rule
10 4:3-3(a)(1) or (a)(3) sua sponte if the judge finds
11 that the conditions for transfer are satisfied.

12 This Court rejects waiver arguments raised by
13 the plaintiff as this Court finds that the conditions
14 for (Indiscernible) this action have been met.

15 As Judge Polifroni stated in his January 25,
16 2018 letter, this letter does not serve to comment on
17 the discretion of the assignment judge to address
18 issues involving venue via conference or sua sponte.
19 Also courts may relax the strict deadlines in the
20 interest of justice pursuant to Rule 1:1-2.

21 In addition, plaintiff's opposition fails to
22 set forth any legitimate prejudice plaintiff may suffer
23 as a result of any perceived delay in filing the motion
24 to transfer venue on the 54 or 57 cases.

25 Plaintiff's arguments that plaintiff would

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GOLD VS. ETHICON

1 somehow suffer prejudice if this action is transferred
2 to Somerset are rejected by this Court. Plaintiff
3 asserts that plaintiff filed the action in Bergen
4 County due to its experience in managing a large volume
5 of cases involving other mesh products and that if
6 plaintiff knew a transfer of venue was possible, the
7 other plaintiffs would not have continued to file their
8 cases in Bergen County.

9 Plaintiff's arguments seeking out this Court
10 amounts to an admission of form shopping that courts
11 should discourage. Plaintiffs raise identical
12 arguments before the AOC and the New Jersey Supreme
13 Court in their MCL application, which was rejected by
14 the Supreme Court.

15 Specifically, plaintiff's counsel argued that
16 there should be an MCL established for all hernia mesh
17 products manufactured by Ethicon before this Court here
18 in Bergen County due to my substantial relevant
19 knowledge in handling the current and prior pelvic mesh
20 cases.

21 The Supreme Court did not establish an MCL in
22 Bergen County before this Court and created an MCL only
23 for the cases involving physiomesh before Judge Johnson
24 (phonetic) in Atlantic County and to prove my point now
25 it is before Judge Porto (phonetic).

GOLD VS. ETHICON

1 Plaintiffs certainly were aware of potential
2 for venue to be transferred. Plaintiff and plaintiff's
3 counsel were on notice of potential venue transfer as
4 early as January 2018 when Judge Polifroni explicitly
5 expressed that unless an individual lives in Bergen
6 County the most convenient venue would be the corporate
7 location of the defendants, which is Somerset County
8 and Middlesex County.

9 Nevertheless, plaintiff's attorneys continued
10 to file complaints in Bergen County. Plaintiff's
11 arguments regarding waiver and/or prejudice are not
12 compelling because actions continued to be filed here
13 in Bergen after the July 12th, 2018 consent order was
14 entered. Plaintiffs have continued to file cases in
15 Bergen County after defendants filed their first motion
16 to transfer venue.

17 Accordingly, plaintiff's argument that if
18 plaintiff's knew about the potential for these cases to
19 be transferred to Somerset County, I guess any other
20 county, many of the plaintiffs subject to this motion
21 may never have pursued this case in New Jersey is
22 rejected by this Court.

23 I have the rare opportunity to handle motions
24 such as this for change of venue as Judge Mizdol's
25 designees, but like an assignment judge matters of

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GOLD VS. ETHICON

1 judicial economy and efficiency must be considered in
2 all decision, including venue decisions.

3 As noted in plaintiff's opposition there are
4 only three civil judges in Somerset County. The
5 concern is the resources available and Somerset County
6 to suddenly have over 150 cases like these as product
7 liability cases. Not only must this Court consider the
8 number of civil judges in Somerset County but also the
9 corresponding amount of support staff and other
10 resources in that county to handle its civil docket.

11 As noted in plaintiff's opposition as well as
12 in the moving papers of defendants, defendant Johnson &
13 Johnson is headquartered in Middlesex County and
14 Middlesex County is the neighboring county of Somerset.

15 Neither party has proposed a recommendation
16 to transfer a venue to Middlesex County, which is also
17 a proper venue. As this Court has previously discussed
18 Bergen County is not a proper venue. Somerset is a
19 proper venue, but so is Middlesex County a proper venue
20 as that is the county where Johnson & Johnson has its
21 headquarters.

22 It cannot be disputed that Middlesex County
23 has the resources and experience to handle cases such
24 as these. Middlesex County has the judicial resources
25 and support staffing resources to suddenly have a

GOLD VS. ETHICON

1 filing of close to over 200 cases pertaining to a
2 particular product.

3 This Court also notes that a previous
4 application was made by plaintiff's counsel for all
5 their cases to be given MCL designation. Having read
6 the submission in support of the application this Court
7 is not surprised that the MCL designation for these
8 non-physiomes mesh cases was rejected.

9 However, this does not preclude a future
10 application by plaintiffs seeking again MCL designation
11 for these cases. This Court is aware of such a
12 scenario that occurred with another product where the
13 first MCL designation was declined, but upon second
14 application was granted.

15 Please do not take these comments as any
16 presumption or conclusion on my part that these non-
17 physiomes hernia cases will receive MCL designation in
18 the future. What I am recognizing, what this Court is
19 recognizing is that it's certainly is possible that
20 upon a second application providing additional
21 information an MCL may be approved.

22 I'm pointing this out as this is another
23 factor I am weighing in making the decision that these
24 cases shall be transferred to Middlesex County, which
25 is an MCL county. Middlesex County is a proper venue

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GOLD VS. ETHICON

1 and has the resources to handle cases such as this.
2 Moreover, sending these cases to Middlesex County
3 obviates many of the issues that the plaintiffs were
4 concerned about involving lack of judicial resources in
5 Somerset as well as the fact that Ethicon is located in
6 Somerset County.

7 This Court is confident that our New Jersey
8 voir dire protocols can eliminate any potential issue
9 concerning a potential juror's bias in connection to
10 Ethicon or Johnson & Johnson. There's no indication
11 whatsoever that a fair jury cannot be obtained in
12 Middlesex County, although your issue is raised as to
13 Somerset County, pertaining to these cases.

14 I personally know this can be done because
15 there has been a product liability litigation in
16 Middlesex County against Johnson & Johnson and that
17 litigation resulted in a plaintiff's verdict.

18 In sum, these cases have absolutely no nexus
19 to Bergen County. While this Court appreciates the
20 compliments that plaintiffs have provided in their
21 papers indicting that they have confidence that I would
22 be able to handle these hernia mesh cases, that's not
23 how assignment judges or our court system makes
24 decisions regarding venue. To do so would be
25 tantamount to judge shopping.

GOLD VS. ETHICON

1 Our system does not allow the parties to pick
2 a venue or a judge because they believe a particular
3 judge would be well-suited for particular case or case
4 type. Moreover, there's no guarantee that I would even
5 be on this assignment during the litigation of these
6 cases.

7 As I said before, one must reflect back to
8 the pelvic mesh scenario where the cases were
9 originally venued as an MCL Atlantic County before
10 Judge Higby. Thereafter, Judge Higby was elevated to
11 the Appellate Division and the cases were assigned to
12 Bergen County before Judge Martinotti in 2014 and then
13 reassigned to this court in 2016 as Judge Martinotti
14 was elevated to the federal bench.

15 My point is that for counsel to indicate a
16 particular judge would be well-suited to handle a case
17 has nothing to do with venue for a venue decision. And
18 moreover, there's no guarantee that the requested or
19 suggested judge will oversee the litigation.

20 Accordingly, the motion of defense counsel is
21 granted and these cases that are the subject of this
22 motion are hereby transferred to Middlesex County as
23 well as any other cases involving hernia mesh that do
24 not involve physiomesh.

25 I'm asking defense counsel to provide a list

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GOLD VS. ETHICON

1 of those cases which I can annex to an order as an
2 exhibit to make the transition and the transfer
3 orderly.

4 I'm aware that there have been motions filed
5 regarding consolidation. As a result of today's
6 decision, those motions are denied as moot. Any
7 decision regarding consolidation or case management of
8 these cases by one judge shall be decided by motion
9 filed in Middlesex County.

10 MS. PATTERSON: Thank you, Your Honor. As
11 you might expect I have housekeeping questions. How
12 would you like the caption or the order to appear with
13 the appended list that Your Honor has requested?

14 THE COURT: Well, the caption for this motion
15 was all of the cases. So, the order will indicate that
16 pursuant to today's decision placed on the record those
17 cases are transferred to Middlesex County. I --

18 MS. PATTERSON: Should we use the docket
19 number of COTTLE that the arg-- that was placed on the
20 record --

21 THE COURT: Yeah.

22 MS. PATTERSON: -- at the beginning of
23 argument?

24 THE COURT: Yeah. We'll use that docket
25 number, but I think for the order we have to all of the

GOLD VS. ETHICON

1 157 cases listed.

2 MS. PATTERSON: Happy to do that or -- or --

3 THE COURT: Then we'll use that docket number
4 --

5 MS. PATTERSON: Is that sufficient for the
6 Court or is a separate actual order required for each
7 of the cases? We'll do whatever the Court requires.

8 THE COURT: I'm thinking of housekeeping to
9 make is easiest for not me or you, but the people who
10 have to physically do the work.

11 I think we could put forth an order under the
12 one docket number indicating that pursuant to this
13 Court's order, I mean we could discuss the language,
14 all cases listed in Exhibit A are hereby transferred to
15 Middlesex County. But I don't think you have to go
16 through the work of making individual orders. I think
17 we could have an exhibit with each of the cases and the
18 docket number.

19 MS. PATTERSON: And another housekeeping
20 issue. There are 109 cases that are -- had motions
21 filed already.

22 THE COURT: Uh-huh.

23 MS. PATTERSON: Can we just add to the list
24 the cases that have been filed in Bergen for which we
25 have not yet filed motions to transfer --

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GOLD VS. ETHICON

1 THE COURT: Yes.
2 MS. PATTERSON: Okay.
3 THE COURT: Yes. And -- and if there's any
4 difficulty with the language, if you want me to look at
5 it first if you want --
6 MS. PATERSON: We'll submit it under the 5D
7 Rule.
8 THE COURT: Right. And if -- I can review it
9 and I can also confer with the people who actually have
10 to do the transferring to ask if they do require
11 anything else. I think we can work that out.
12 MS. PATTERSON: Thank you, Your Honor.
13 MR. KINCANNON: I think an omnibus order
14 would be fine. My question was with regard to how
15 these will these be assigned. Is there any direction
16 or will Middlesex handle that in terms of --
17 THE COURT: Middlesex will handle that.
18 MR. KINCANNON: So, I don't if it'll go to
19 one judge or ten judges and be split up or how this
20 will be administered. So, I'm not sure that's
21 something we will deal with or? I mean, I don't know
22 who to --
23 THE COURT: I'm going --
24 MR. KINCANNON: -- call in Middlesex and say,
25 okay, how do you want us to get before you or deal with

GOLD VS. ETHICON

1 these?
2 THE COURT: The assignment judge in Middlesex
3 will be made aware of this and I would give it some
4 time frame, but I -- I would then suggest a
5 communication by your office to -- to the assignment
6 judge with -- with your concerns or questions.
7 MR. KINCANNON: Understood. Thanks, Your
8 Honor.
9 MS. PATTERSON: Thank you, Your Honor.
10 THE COURT: Anything further?
11 MR. KOTT: Not from the defendants, Your
12 Honor.
13 THE COURT: Okay. So, in terms of -- I'm not
14 going to sign any order because the order that you
15 prepared has to go into Somerset as well as it just
16 encompasses --
17 MR. KOTT: Right.
18 THE COURT: -- 109 cases.
19 MR. KOTT: Right. Well, --
20 MS. PATTERSON: Plus. It would be, about --
21 it includes, about, ten more I think.
22 THE COURT: Right. We need to --
23 MS. PATTERSON: Uh-huh.
24 MR. KOTT: Yeah.
25 THE COURT: We need to rephrase the order.

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ILENE GOLD, et al. v. JOHNSON & JOHNSON, et al. -- September 28, 2018

Sheet 23

44

GOLD VS. ETHICON

1 Okay.

2

MR. KOTT: Yeah.

3

THE COURT: Thank you.

4

MR. KOTT: Okay. Thank you, Your Honor.

5

MR. KINCANNON: Thank you, Your Honor.

6

(Proceedings concluded)

45

CERTIFICATION

I, Brandy Winow, the assigned transcriber, do hereby certify the foregoing transcript of proceedings in the Bergen County Superior Court on September 28, 2018, digitally recorded, Time Index from 10:03:08 a.m. to 10:51:21 a.m., is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded to the best of my knowledge and ability.

/s/ Brandy Winow

Brandy Winow T#654
ELITE TRANSCRIPTS, INC.
Butler, New Jersey 07405

October 5, 2018

Elite Transcripts, Inc.

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EXHIBIT D

DAWN BREVARD-WATERS
Trial Court Administrator

N.J. Courts Website
<http://www.njcourts.com/>

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IAN RATZLAFF
Civil Division Manager

October 25, 2018

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Ridgeland, MS 39151-6010

Re: Ethicon Hernia Mesh Product (other than Physiomesh)

Dear Counsel,

In response to the enclosed Omnibus Order, signed October 9, 2018, by Bergen Vicinage, Hon. Rachelle L. Harz, J.S.C., which transferred from Bergen to Middlesex, one hundred sixty-six (166) product liability cases involving an Ethicon Hernia Mesh Product (other than Physiomesh). Please see the enclosed #08-12 directive regarding Multicounty Litigation Guidelines and Criteria for Designation, which outlines the procedure for requesting designation of a case as multicounty litigation for centralized

1 Ethicon Mesh (Not Physiomesh) Letter MID

management. Without Supreme Court classification as multicounty litigation, these cases will be assigned to different pretrial judges, based on the last two digits of the Middlesex County docket number, which will be assigned as they are transferred in from Bergen.

Sincerely,



Ian Ratzlaff
Civil Division Manager
Middlesex Vicinage – Civil Division

Enc.

C: Talronda E. Phoenix, Esq., Assistant Director, AOC Civil Practice Division
Hon. Jamie D. Happas, P.J.Cv. (no enclosure)
James A. Barry, Esq.
Michael A. Galpern, Esq.
Joshua Kincannon, Esq.

Marc D. Grossman, Esq.
Tobias Millrood, Esq.
Michael G. Daly, Esq.
Edward A. Ruffo, Esq.
Derek Braslow, Esq.
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Attorneys for Defendants
Johnson & Johnson & Ethicon, Inc.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO. BER-L-7065-17

JASON COTTLE,

Plaintiff,

v.

JOHNSON & JOHNSON and ETHICON,
INC.,

Defendants.

Civil Action

**ORDER GRANTING
DEFENDANTS' MOTION TO
TRANSFER VENUE IN PART AND
TRANSFERRING TO MIDDLESEX
COUNTY THIS MATTER, ALL
MATTERS INCLUDED ON SCHEDULE
A ATTACHED TO THIS ORDER, AND
ALL FUTURE MATTERS THAT
INCLUDE PRODUCT LIABILITY
CLAIMS INVOLVING AN
ETHICON HERNIA MESH PRODUCT
OTHER THAN PHYSIOMESH**

FILED

OCT. 09 2018

**RACHELLE L. HARZ
J.S.C.**

THIS MATTER having been opened before the Court by McCarter & English, LLP, attorneys for Defendants Johnson & Johnson and Ethicon, Inc., seeking an Order transferring venue of the within matter from Bergen County to Somerset County; and The Court having considered the papers submitted in support of and in opposition to the motion; and The Court on September 28, 2018 having heard oral argument of counsel (Joshua S. Kincannon, Esq., of Lomurro, Munson, Comer, Brown & Schottland, LLC, and Adam Evans, Esq., of the Hollis Law Firm, P.A., counsel for Plaintiff, and David R. Kott, Esq., of McCarter & English, LLP, and Kelly S. Crawford, Esq., of Riker Danzig Scherer Hyland & Perretti, LLP, counsel for Defendants); and The Court having rendered an oral opinion on the record on September 28, 2018; and good cause appearing;

IT IS on this ^{28th} day of ~~October~~, 2018;

ORDERED that:

1. Defendants' Motion to Transfer Venue be and hereby is **GRANTED IN PART** and this matter, all matters included on Schedule A attached to this Order, and all future matters filed in Bergen County that include product liability claims involving an Ethicon Hernia Mesh Product other than Physiomesh are transferred to Middlesex County; and

2. The Clerk, Superior Court of New Jersey, Bergen County, is hereby directed to transfer this matter, all matters included on Exhibit A attached to this Order, and all future matters filed in Bergen County that include product liability claims involving an Ethicon Hernia Mesh Product other than Physiomesh to Middlesex County.

Rachelle L Harz

HON. RACHELLE L. HARZ, J.S.C.

Opposed

Unopposed

oral argument, reasons set forth on the Record

EXHIBIT A

SCHEDULE "A" BERGEN COUNTY NON PHYSIO MATTERS.

Aaron, Daniel & Heather	BER-L-0870-18
Abbold, Mark & Pam	BER-L-3727-18
Adams, Richard J.	BER-L-3951-18
Alexander, Diane	BER-L-1241-18
Alumbangh, Alan	BER-L-207-18
Alvarado, Denise/Jessica	BER-L-1479-18
Anawaty, Viola	BER-L-1516-18
Austin, Diana	BER-L-4204-18
Banks, Lucy	BER-L-4977-18
Bassett, Richard	BER-L-7836-17
Bean, Norman	BER-L-198-18
Beaton, Timothy & Sheila	BER-L-3317-18
Blackstone, Janice	BER-L-4332-18
Bolyard, Glenn	BER-L-5689-18
Booth, Gloria Jean & Russell	BER-L-3892-18
Boston, Courtney D.	BER-L-4103-18
Bovino, Edwin	BER-L-5691-18
Bradford, William	BER-L-1806-18
Briscoe, Anthony & Francisca	BER-L-1691-18
Brooks, Caroline	BER-L-3916-18
Campbell, Cassandra	BER-L-8998-17
Capshaw, Clifton	BER-L-1530-18
Chavira, Juan	BER-L-4489-18
Clements, Charles P.	BER-L-5721-18
Cinlee, Sherry Marie	BER-L-3703-18
Collier, Greg	BER-L-2214-18
Cordova, Michael	BER-L-4532-18
Cortie, Jason	BER-L-7065-17
Darnell, David	BER-L-4038-18
Deffenbaugh, Gary	BER-L-3517-18
Dias, Alessandro	BER-L-1471-18
Diloreto, Edward	BER-L-1018-18
Finotti, James G.	BER-L-3994-18

SCHEDULE "A" BERGEN COUNTY NON PHYSIO MATTERS.

Fontenot, Emily	BER-L-1513-18
Fowler, Susie	BER-L-8572-17
Gaddis, Troy	BER-L-658-18
Galvez, Michael	BER-L-1393-18
Garrett, Shenecca	BER-L-3726-18
Gately, Brenda	BER-L-9151-17
Gibson, Renee C.	BER-L-1110-18
Godfrey, Holly	BER-L-4334-18
Gold, Ilene	BER-L-8037-17
Gonzales, Maria Luisa A.	BER-L-5726-18
Green, Margaret	BER-L-5687-18
Griffin, Charles	BER-L-8827-17
Guidry, Stephanie	BER-L-4515-18
Hart, Dennis	BER-L-1349-18
Hecker, Austin	BER-L-3728-18
Hendrix, Patricia	BER-L-3751-18
Henley, James G.	BER-L-3015-18
Hinn, John	BER-L-3753-18
Hodge, Pamela	BER-L-2577-18
Holman, Raymond & Cora	BER-L-3808-18
Johnson, Cathy	BER-L-3720-18
Johnson, Heather	BER-L-2003-18
Johnson, Shaunta	BER-L-5379-18
Jones, Christina	BER-L-4082-18
Jones, Eugenia	BER-L-3452-18
Jones, Geornie	BER-L-3913-18
Krampan-Yerry, Denise	BER-L-1466-18
Lang, Christine M.	BER-L-1067-18
Leeza, Cheryl	BER-L-4559-18
Lindly, James	BER-L-1402-18
Lindsey, Scott E.	BER-L-1210-18
Linnenbrink, Christina	BER-L-8829-17
Lloyd, William	BER-L-2952-18

SCHEDULE "A" BERGEN COUNTY NON PHYSIO MATTERS.

Lotridge, Robin	BER-L-1467-18
Lowe, Sandra	BER-L-5724-18
Lowrey, Robert	BER-L-4577-18
Lynch, Roy	BER-L-4043-18
Mack, Edward & Robin	BER-L-1220-18
Maestras, Joseph	BER-L-1456-18
Manningo, Jerri Ann	BER-L-5275-18
Mans, Raul	BER-L-4035-18
Mathews, William D.	BER-L-5723-18
McCurtisbeon, Deanna	BER-L-4475-18
Miller, Ronald	BER-L-2345-18
Morrone, Adele	BER-L-5294-18
Mosby, Russell	BER-L-5722-18
Moskowitz, Scott	BER-L-5011-18
Mounjjoy, James & Nancy	BER-L-1480-18
Muniz, Rick	BER-L-3516-18
Newburn, Nakeisha	BER-L-4523-18
Newman, Stephen	BER-L-5296-18
Noakes, Kenneth	BER-L-8276-17
Parham, Roderick	BER-L-4052-18
Payne, Jonathan	BER-L-5719-18
Perez, Maria	BER-L-4486-18
Perez, Nora	BER-L-4115-18
Pikulecky, Jamie & Jeffrey	BER-L-1052-18
Redding, Shoanna	BER-L-184-18
Reynolds, Burton	BER-L-279-18
Rice, Melissa	BER-L-197-18
Rivas, Angelina	BER-L-4113-18
Schrimer, Yesenia	BER-L-1222-18
Scobee, Jerry A.	BER-L-2355-18
Senkel, William	BER-L-1433-18
Shackelford, Cecelia	BER-L-1200-18
Shepherd, Terry T.	BER-L-2354-18

SCHEDULE "A" BERGEN COUNTY NON PHYSIO MATTERS.

Plaintiff	
Smith, Diane M.	BER-L-652-18
Smith, Joseph W.	BER-L-1692-18
Smith, Terrence	BER-L-4913-18
Soydes, David	BER-L-2513-18
Soares, Calvin	BER-L-4476-18
Strawser, Janice	BER-L-5034-18
Szaroketa, Christopher	BER-L-1458-18
Tavian, Michael	BER-L-4056-18
Taylor, Cindy	BER-L-4573-18
Trebolo, Walter	BER-L-9133-17
Tyler, Daniel	BER-L-4884-18
Usey, Christina	BER-L-1244-18
Vinas, Daniel	BER-L-5290-18
Ward, Sue E.	BER-L-2353-18
Whitfield, Michael & Melissa	BER-L-4885-18
Williams, James	BER-L-2337-18
Wilson, Donald & Bernadette	BER-L-4800-18
Wolfe, Donna	BER-L-3891-18
Wolfe, Patty	BER-L-3583-18
Woods, Lisa	BER-L-4482-18
Alguacil, Leila	BER-L-6881-18
Asturi, Annetto	BER-L-5998-18
Austin, Jeffrey	BER-L-6488-18
Blocker, Shannon	BER-L-6786-18
Brawley, Ann	BER-L-6008-18
Brown, Lionel, Sr. and Doris	BER-L-5656-18
Burns, Gregory and Edie	BER-L-6927-18
Classen, Mary and Anthony C.	BER-L-6162-18
Corgan, Trivie	BER-L-6338-18
Delph, Terrie and Matthew	BER-L-6784-18
Dill, Barbara	BER-L-6548-18
Falcon, Lloyd	BER-L-6342-18
Frank, Fontella	BER-L-6358-18

SCHEDULE "A" BERGEN COUNTY NON PHYSIO MATTERS.

	BER-L-6030-18
Guy, Louise & Raymond	BER-L-6483-18
Hall, Vivian L.	BER-L-5382-18
Harding, Sheri and Hargis	BER-L-6879-18
Henry, Tracy L.	BER-L-6486-18
Holland, James	BER-L-6921-18
Hughes, Lance	BER-L-5950-18
Ishii, Freedom	BER-L-5952-18
Iacuzzi, Victor	BER-L-5959-18
Johnson, Anna	BER-L-6484-18
Lynn, Michael	BER-L-6036-18
Mahm, Edward & Gale	BER-L-5954-18
McCutcheon, Teresa	BER-L-5953-18
McNally, Sandra	BER-L-6367-18
Moore, Rochelle	BER-L-6163-18
Murphy, Karen	BER-L-5956-18
Newland, Kenneth	BER-L-6211-18
Nomikos, Michael	BER-L-6290-18
Nuri, Lindita and Fatmir	BER-L-6487-18
Palka, Mary L.	BER-L-6912-18
Perez, Joseph	BER-L-6037-18
Pierz, Jerry and Teri	BER-L-4238-18
Redenauer, John, L. St.	BER-L-5962-18
Shaw, Jerry	BER-L-6880-18
Skiba, Joseph A.	BER-L-6785-18
Snyder, Rick C.	BER-L-6928-18
Spears, Mark	BER-L-5248-18
Strauss, Nathan K.	BER-L-6164-18
Thibodeaux, Cecile G. and Danny	BER-L-5960-18
Vaughn, William	BER-L-5940-18
Warr, Anita	BER-L-6497-18
Waterfield, Floyd and Debra	BER-L-6484-18
Wetch, Dabi	BER-L-6926-18
White, Steve	




GLENN A. GRANT, J.A.D.
Acting Administrative Director of the Courts

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Directive # 08-12
[Supersedes Directive # 07-09]

To: Assignment Judges
Civil Presiding Judges

From: Glenn A. Grant, J.A.D. 

Subj: Multicounty Litigation Guidelines (Formerly "Mass Tort Guidelines")

Date: August 7, 2012

The Supreme Court as part of its July 19, 2012 Omnibus Rule Amendment Order adopted revisions to Rule 4:38A, to be effective September 4, 2012. Accordingly, as of that date, Rule 4:38A will be captioned "Centralized Management of Multicounty Litigation"; prior thereto the rule was captioned "Centralized Management of Mass Torts".

Rule 4:38A provides that the Court shall adopt procedures for the centralized management of cases covered by the rule, with those procedures to be promulgated by the Administrative Director. This directive promulgates the attached "Multicounty Litigation Guidelines and Criteria for Designation" ("Multicounty Litigation Guidelines"), effective September 4, 2012. Directive #07-09, which promulgated the Revised Mass Tort Guidelines, is therefore superseded as of that same September 4, 2012 date.

The revisions to the court rule and to the guidelines were solely to replace the superseded "Mass Tort" terminology with new "Multicounty Litigation" terminology.

Questions regarding Multicounty Litigation Guidelines promulgated by this directive may be directed to Leslie A. Santora, Esq., Chief, Civil Court Programs, Civil Practice Division, AOC, by phone at 609-292-8471 or by LotusNotes email.

G.A.G.

Attachment (Multicounty Litigation Guidelines)

cc: Chief Justice Stuart Rabner
Hon. Carol E. Hlgbee
Hon. Brian R. Martinotti
Hon. Jessica R. Mayer
Hon. Vincent LaBlon
Hon. Ann G. McCormick
Mark Neary, Supreme Court Clerk

Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Trial Court Administrators
Gurpreet M. Singh, Special Assistant
Civil Division Managers
Leslie A. Santora, Chief

MULTICOUNTY LITIGATION GUIDELINES AND CRITERIA FOR DESIGNATION

[As Promulgated by Directive # 08-12 Pursuant to Rule 4:38A]

Procedure for Requesting Designation of a Case as Multicounty Litigation for Centralized Management

The Assignment Judge of any vicinage or an attorney involved in a case or cases that may constitute multicounty litigation may apply to the Supreme Court, through the Administrative Director of the Courts, to have the case(s) classified as multicounty litigation, and assigned to a designated judge for centralized management. The Assignment Judge or attorney making such an application must give notice to all parties then involved in the case(s), advising that the application has been made and that a Notice to the Bar will appear in the legal newspapers and in the Multicounty Litigation Information Center on the Judiciary's Internet website providing information on where and within what time period comments on and objections to the application may be made.

Such Notice advising of the application and requesting comments or objections will be sent by the Administrative Director to all Assignment Judges and Civil Presiding Judges, will be published by the Administrative Director in the legal newspapers, and will be posted on the Judiciary's Internet website both in the Notices section and in the Multicounty Litigation Information Center. Once the comment period has closed, the Administrative Director of the Courts will present the application, along with a compilation of any comments and objections received, to the Supreme Court for its review and determination.

If the Supreme Court determines that the case(s) should be classified as multicounty litigation and assigned to a designated judge for centralized management and, in that judge's discretion, trial, an appropriate Order will be entered. The Order will be sent to all Assignment Judges and Civil Presiding Judges, will be published in the legal newspapers, and will be posted in the Multicounty Litigation Information Center on the Judiciary's Internet website.

Criteria to be Applied in Determining Whether Designation as Multicounty Litigation is Warranted

In determining whether designation as multicounty litigation is warranted, the following factors, among others, will be considered:

- whether the case(s) possess(es) the following characteristics:
 - it involves large numbers of parties;

- it involves many claims with common, recurrent issues of law and fact that are associated with a single product, mass disaster, or complex environmental or toxic tort;
 - there is geographical dispersment of parties;
 - there is a high degree of commonality of injury or damages among plaintiffs;
 - there is a value interdependence between different claims, that is, the perceived strength or weakness of the causation and liability aspects of the case(s) are often dependent upon the success or failure of similar lawsuits in other jurisdictions; and
 - there is a degree of remoteness between the court and actual decision-makers in the litigation, that is, even the simplest of decisions may be required to pass through layers of local, regional, national, general and house counsel.
- whether there is a risk that centralization may unreasonably delay the progress, increase the expense, or complicate the processing of any action, or otherwise prejudice a party;
 - ~~whether centralized management is fair and convenient to the parties, witnesses and counsel;~~
 - whether there is a risk of duplicative and inconsistent rulings, orders or judgments if the cases are not managed in a coordinated fashion;
 - whether coordinated discovery would be advantageous;
 - whether the cases require specialized expertise and case processing as provided by the dedicated multicounty litigation judge and staff;
 - whether centralization would result in the efficient utilization of judicial resources and the facilities and personnel of the court;
 - whether issues of insurance, limits on assets and potential bankruptcy can be best addressed in coordinated proceedings; and
 - whether there are related matters pending in Federal court or in other state courts that require coordination with a single New Jersey judge.

Choice of Site for Centralized Management

Issues of fairness, geographical location of parties and attorneys, and the existing civil and multicounty litigation caseload in the vicinage will be considered in determining to which vicinage a particular multicounty litigation will be assigned for centralized management. This decision will be made by the Supreme Court.

Subsequent Related Actions

The initial order of the Supreme Court denominating a particular category of cases as multicounty litigation and referring those cases to a particular county for centralized management may specify that subsequent related actions are to be transferred from the counties in which they are filed to the designated multicounty litigation county and judge without further application to the Supreme Court.

Severance

The multicounty litigation judge may thereafter review the cases designated as a multicounty litigation and assigned for centralized management, and may sever and return to the original county(ies) of venue any that no longer warrant centralization.

Termination of Centralized Management

When the multicounty litigation judge determines that centralized management is no longer necessary or appropriate under the circumstances, he or she will send a written report to the Administrative Director, with copies to the Assignment Judge, Civil Presiding Judge, Trial Court Administrator, Civil Division Manager of his or her vicinage and all counsel of record in any pending cases. The report shall provide details of matters resolved as well as the particulars concerning any unresolved matters including whether the latter will be returned to their original county(ies) of venue or will continue to be handled until resolution by the multicounty litigation judge. This report will be presented to the Supreme Court for review. Thereafter, a Notice to the Bar advising of the request and requesting comments or objections will be sent to all Assignment Judges and Civil Presiding Judges, will be published by the Administrative Director in the legal newspapers and will be posted on the Judiciary's Internet website both in the Notices section and in the Multicounty Litigation Information Center.

Once the comment period has closed, the Administrative Director of the Courts will present the termination request, along with a compilation of any comments and objections received, to the Supreme Court for its review and determination.

If the Supreme Court determines that the multicounty litigation designation should be terminated, it may terminate the centralized management or determine that continuing the centralized management of any pending and future such cases by the designated multicounty litigation judge is warranted. Following the Supreme Court's determination, an appropriate order will be entered. The order will be sent to all Assignment Judges and Civil Presiding Judges, will be published in the legal newspapers and will be posted on the Judiciary's Internet website both in the Notices section and in the Multicounty Litigation Information Center.

January 25, 2019

VIA HAND DELIVERY

Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Administrative Office of the Courts of the State of New Jersey
Richard J. Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08611

David R. Kott
Partner
T. 973-639-2056
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dkott@mccarter.com

**Re: Dec. 3, 2018 Application for Multicounty Litigation Designation for
Proceed and Prolene Hernia System Mesh Products**

Dear Judge Grant:

This Firm, along with Riker Danzig Scherer Hyland & Perretti LLP and Butler Snow LLP, represents Defendants Ethicon, Inc. ("Ethicon") and Johnson & Johnson (collectively "Defendants") in certain cases involving Proceed Surgical Mesh, Proceed Ventral Patch and Prolene Hernia System products currently pending in New Jersey. These cases -- once again -- are the subject of a Rule 4:38A Multi-County Litigation ("MCL") application, dated December 3, 2018, which is currently pending before the Administrative Office of the Courts ("AOC"). The AOC issued a Notice to the Bar on December 26, 2018, requesting comments or objections.¹ This letter is submitted pursuant to that notice and in response to Plaintiffs' application.

This is Plaintiffs' second attempt to manufacture an MCL for cases involving a broad array of different hernia mesh products. In February 2018, Plaintiffs' counsel filed an application seeking to establish an MCL for five different mesh products. In response to that application, Defendants did not oppose the creation of an MCL for cases involving PHYSIOMESH™ Flexible Composite Mesh ("Physiomes"), as there was already a federal multidistrict litigation ("MDL") involving such cases, which remains pending in the United States District Court for the Northern District of Georgia. Defendants did oppose, however, the creation of a single, unwieldy MCL for all five distinct products, which would necessarily involve complex and unworkable discovery issues, making coordination inefficient and unfairly prejudicial. On July 17, 2018, the Supreme Court created an MCL for cases involving Physiomes only, and assigned the MCL to Atlantic County for centralized case management by Superior Court Judge Nelson C. Johnson.

For the reasons set forth in Defendants' May 11, 2018 response to Plaintiffs' initial MCL application, and stated herein, Defendants again oppose the creation of an

¹ The AOC's notice indicates that Plaintiffs' application requests assignment of the proposed MCL to Middlesex County; however, Plaintiffs' application did not request any particular MCL venue.

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WILMINGTON
WASHINGTON, DC

MCL for cases involving hernia mesh products other than Physiomesh. The hernia mesh products subject to this application are each materially different with respect to their development, design, and materials, and are not suitable for MCL designation. State and federal courts have routinely reminded litigants that coordination or centralization of litigation “should be the last solution after considered review of all other options.” See, e.g., In re: Linear Gadolinium-Based Contrast Agents Products Liability Litig., Case MDL No. 2868, Oct. 10, 2018 Order Denying Transfer (J.P.M.L) (quoting In re: Best Buy Co., Inc., Cal. Song-Beverly Credit Card Act Litig., 804 F. Supp. 2d 1376, 1378 (J.P.M.L. 2011)). Creating a second MCL for these divergent products would serve only to invite more individuals and law firms to file lawsuits in New Jersey – regardless of the merit (or lack thereof) of their claims. Plaintiffs’ proposal will make New Jersey a magnet for the meritless, as many plaintiffs will attempt to ride the wave of coordinated litigation managed by others. Such a consequence has become a reality in practice that cannot be ignored, and respectfully, should be taken into consideration by the Court.

In the alternative, in the event the Court is inclined to establish another MCL, Defendants respectfully submit that it should be limited to cases involving Proceed Surgical Mesh and the Proceed Ventral Patch only – but not create an MCL for Prolene Hernia System, which in no way meets the standards for an MCL. Cases involving these two Proceed products represent the overwhelming majority of the cases that are the subject of the Plaintiffs’ current application. The benefits of any coordination would be better managed separate from, but alongside, the Physiomesh MCL in Atlantic County.

PROCEDURAL HISTORY

I. Plaintiffs’ Initial Law Division Filings in Bergen County

Beginning in late 2017, Plaintiffs (largely represented by the same small number of law firms supporting this application) began filing complaints in New Jersey Superior Court, Bergen County, alleging product liability claims related to hernia mesh products manufactured by Ethicon. At that time, none of the Plaintiffs resided in Bergen County, nor did any Plaintiff’s counsel have an office in Bergen County. Indeed, the overwhelming majority of Plaintiffs lived outside of New Jersey and received the implant outside of New Jersey.

On January 11, 2018, the Lomurro Firm, which represents a significant number of the Plaintiffs, wrote to Bergen County Civil Presiding Judge Robert L. Polifroni asking for a case management conference to discuss consolidation or an MCL created for all hernia mesh cases then-pending in Bergen County. (See Ex. A: Plaintiffs’ 1/11/18 Letter to Judge Polifroni). Defendants opposed that request. (See Ex. B: Defendants’ 1/26/18 Letter to Judge Polifroni).

Judge Polifroni flatly rejected Plaintiffs' "informal" attempt to achieve MCL designation in Bergen County and reminded the Lomurro Firm of New Jersey's MCL application process. (See Ex. C: Judge Polifroni's January 25, 2018 letter to Plaintiffs' Counsel). In his letter, Judge Polifroni explained that "[d]ecisions by counsel to select a county of venue, and then request to have the matters consolidated and handled by one judge outside of the MCL format, will not be validated by this Court." (Id.) Judge Polifroni further noted that "unless the individual plaintiffs live in Bergen County, it seems reasonable the most convenient venue would be the corporate location of the defendants, which appears to be outside of Bergen County." (Id.) (emphasis added).

Despite the Court's suggestion, Plaintiffs' counsel continued to file lawsuits in Bergen County, even though that venue has no connection to the parties or the circumstances underlying the complaints.

II. Plaintiffs' First MCL Application

On February 28, 2018, Plaintiffs filed a Rule 4:38A Multicounty Litigation Application with the AOC, seeking the creation of an MCL for five different hernia mesh products manufactured by Ethicon, including a product that, at that time, was not even at issue in any case pending in New Jersey. Specifically, Plaintiffs sought MCL designation for the following products: (1) Physiomesh; (2) PROCEED® Surgical Mesh; (3) PROCEED® Ventral Patch; (4) Prolene Hernia System; and (5) Prolene 3D Patch. Additionally, Plaintiffs requested that the proposed MCL be assigned to The Honorable Rachelle L. Harz in Bergen County.

The AOC issued a Notice requesting comments or objections to Plaintiffs' counsel's MCL application by May 14, 2018. (See Apr. 11, 2018 Notice to the Bar by Glen A. Grant, J.A.D., available at <https://www.njcourts.gov/notices/2018/n180412a.pdf?cacheID=QaWMX7I>). Defendants timely responded to Plaintiffs' MCL application. In their response, Defendants did not oppose the creation of an MCL for cases involving only Physiomesh, as such an MCL would mirror the federal multidistrict litigation pending in the United States District Court for the Northern District of Georgia and would promote judicial efficiency. Defendants did oppose creation of a broader MCL involving so many different products, as it would create complex and unworkable discovery issues, making coordination inefficient and unfairly prejudicial. The same remains true today.

On July 17, 2018, the Supreme Court created an MCL for cases involving Physiomesh only, and denied Plaintiffs' request to include the Proceed and Prolene cases. The Court assigned the Physiomesh MCL to Atlantic County for centralized case management by Superior Court Judge Nelson C. Johnson. (See Ex. D: Order of Supreme Court of New Jersey, dated July 17, 2018). Specifically, the Supreme Court ordered that "all pending and future New Jersey state court actions against Johnson & Johnson and Ethicon, Inc. alleging injuries as a result of use of

Physiomesch Flexible Composite Mesh . . . shall be transferred from the county of venue to the Superior Court, Law Division, Atlantic County.” (See id.) Atlantic County Superior Court Judge John C. Porto is currently presiding over the Physiomesch MCL. As of the date of this letter, Judge Porto has entered four (4) case management orders in the Physiomesch MCL.

III. Judge Harz Transfers Proceed and Prolene Cases to Middlesex County

After the Physiomesch MCL was created, cases involving the other hernia mesh products remained in Bergen County – a venue having no connection to Plaintiffs, their claims, or Defendants. Accordingly, on September 6, 2018, Defendants filed motions to transfer all Bergen County Ethicon hernia mesh cases to Somerset County, where Ethicon, the company responsible for the design, manufacture, marketing, sale, and distribution of those products, is located.

On September 28, 2018, Judge Harz granted Defendants' motions to transfer venue, and ordered that “all cases filed by the plaintiffs against the defendants pertaining to personal injury product liability claims concerning hernia mesh other than Physiomesch” be transferred to Middlesex County. (See Ex. E: Transcript of Motion and Opinion, dated Sept. 28, 2018, at 27:1-4). Judge Harz stated that “Bergen County is not a proper venue” and that “these cases have absolutely no nexus to Bergen County.” (Id. at 36:18, 38:18-19). Specifically, Judge Harz held:

Plaintiff has failed to establish that venue is proper in Bergen County. Ethicon headquarters are in Somerville, Somerset County. That is where the . . . majority of Ethicon's activities and New Jersey business is conducted and where Ethicon's business activities are targeted in this State. Likewise Johnson & Johnson's principle New Jersey office is in Middlesex County which is where the majority of its business is conducted in this State.

Accordingly, pursuant to Rul[e] 4:3-2, and the principles articulated in Crepy [v. Reckitt Benckiser, LLC], 448 N.J. Super. 419 (Law Div. 2016), as well as the proposed amendment clarifying the rule consistent with Crepy venue is not properly laid in Bergen County.

(Id. at 32:18-33:5).

Judge Harz further observed, “Plaintiff's arguments seeking out this Court amounts to an admission of for[u]m shopping that courts should discourage” and recognized that Plaintiffs were raising “identical” arguments to those raised in their first MCL

application "which was rejected by the Supreme Court." (Id. at 34:9-14). The judge reasoned:

In sum, these cases have absolutely no nexus to Bergen County. While this Court appreciates the compliments that plaintiffs have provided in their papers indicating that they have confidence that I would be able to handle these hernia mesh cases, that's not how assignment judges or our court system makes decisions regarding venue. To do so would be tantamount to judge shopping.

Our system does not allow the parties to pick a venue or a judge because they believe a particular judge would be well-suited for particular case or case type.

(Id. at 38:18-39:4). Judge Harz further reasoned that Middlesex County had the resources and experience to handle these matters as individual cases. (Id. at 36:22-37:2). Judge Harz entered an Order on October 9, 2018, which denied as moot Plaintiffs' motion to consolidate all Proceed and Prolene hernia mesh cases. (See Ex. F: Oct. 9, 2018 Order).

Since the entry of Judge Harz's Order, Plaintiffs have filed complaints involving Ethicon hernia mesh products other than Physiomesh in Middlesex County.

BACKGROUND

The products involved in the cases implicated by Plaintiffs' second MCL application are distinct products with distinct regulatory histories and product development timelines. By way of background, there are multiple different types of hernias, each characterized largely by their anatomical location and presentation and which can require different treatment.² Three of the most common hernias include inguinal, ventral, and umbilical.³ For many years, surgeons have repaired hernias using medical devices made of mesh. There are over one million hernia repair surgeries

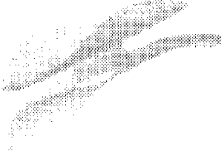
² A hernia is a hole in the muscular layer of the abdominal wall, through which pre-peritoneal or intra-abdominal contents can protrude. This protrusion results in a bulge, which is often associated with abdominal discomfort and cosmetic deformity. An untreated hernia can also lead to further medical complications.

³ An inguinal hernia is a defect in the abdominal wall that occurs through an area of weakening of the muscle layers of the lower abdominal wall. A ventral hernia is a defect in the abdominal wall (usually midline) that occurs along the scar formed by prior abdominal surgery. An umbilical hernia is a hernia that develops at the umbilicus through a weakened layer of the abdominal wall.

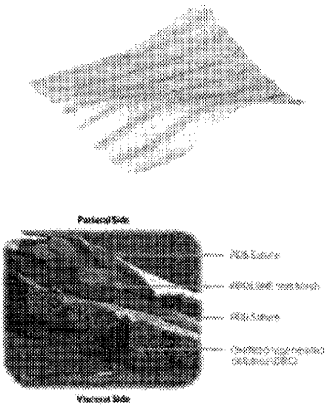
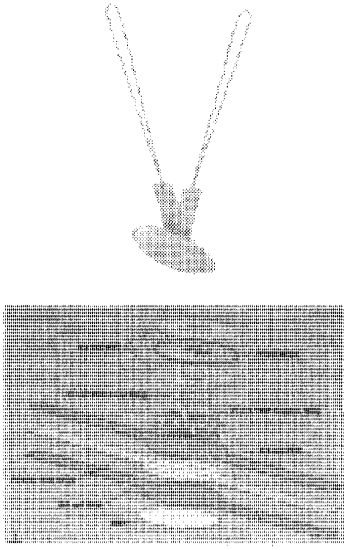
performed each year in the United States alone. By the year 2000, fewer than 10% of hernia repair surgeries for groin hernias did not utilize a mesh product.⁴ The mesh in many, but not all, of these devices is made from sterile, polypropylene-based materials. Depending on the surgeon's repair technique, the mesh is typically placed either under or over the hernia and held in place utilizing one of several methods. The mesh acts as "scaffolding" for new growth of the patient's own tissue, which eventually incorporates the mesh into the surrounding area to provide the needed support.

For more than 50 years, Ethicon, Inc. has manufactured and sold a number of distinct hernia mesh devices. In 2010, Ethicon launched Physiomesh, a mesh device comprised of Prolene fibers laminated between Monocryl and polydioxanone films. The Monocryl layers dissolve and allow for a gradual in-growth of tissue into the mesh. Ethicon voluntarily withdrew Physiomesh from the market in 2016. In 2017, a federal MDL was created for cases alleging claims exclusively related to Physiomesh. That MDL is assigned to Judge Richard Story in the United States District Court for the Northern District of Georgia.

At the time of Plaintiffs' first application for MCL designation, there were approximately 62 cases filed in the Bergen County Superior Court alleging product liability claims related to five different products. Plaintiffs' current application seeks an MCL designation for three different products: (1) PROCEED® Surgical Mesh; (2) PROCEED® Ventral Patch; and (3) Prolene Hernia System. The following chart provides a brief description of the products identified by Plaintiffs in their application:

Device	Type of Mesh	Year Launched	Status
Prolene Hernia System	3D with onlay and underlay patch, non-absorbable 	1997	Currently marketed

⁴<https://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/ImplantsandProsthetics/HerniaSurgicalMesh/default.htm>.

Device	Type of Mesh	Year Launched	Status
PROCEED® Surgical Mesh	Flat, partially absorbable 	2004	Currently marketed
PROCEED® Ventral Patch	3D patch, partially absorbable 	2008	Currently marketed

Each of these products is materially different with respect to development, design, materials, method of manufacture, place of manufacture, primary uses, method of placement, and labeling, even though they share some components. Some of the products were manufactured in Germany, while others were manufactured in the United States. The products were conceived and designed at different times over several decades with different individuals involved.

Plaintiffs' attempt to portray dozens of actions involving different products as presenting common issues misleadingly ignores the true differences between the products and the allegations of the complaints. At the outset, Plaintiffs generically label all three products as being "multi-layered" and assert the devices have similar designs and compositions. In fact, each of the products has a different design and components, and these differences are material to Plaintiffs' claims.

Although Plaintiffs generally describe all of the products as multi-layered hernia mesh products, Prolene Hernia System, in fact, is not multi-layered. And while both Proceed Ventral Patch and Proceed Surgical Mesh are partially absorbable, Prolene Hernia System is not absorbable. Additionally the products have different uses: Proceed Surgical Mesh and Proceed Ventral Patch are tissue-separating devices typically used on the inside of the abdominal wall, whereas Prolene Hernia System is typically used for inguinal repairs. Proceed Surgical Mesh is also very different from both the Proceed Ventral Patch and Prolene Hernia System in that Proceed Surgical Mesh is flat, but the other products are three-dimensional and intended to be applied, not just over, but through a hernia defect.

Those differences are not only significant in how the products are used, they are significant in how Plaintiffs themselves portray these products. Indeed, Plaintiffs rely on those very differences to allege that the design of each product makes it more dangerous than other products. In actions related to the Proceed Ventral Patch, for example, Plaintiffs claim that the product has characteristics that make it more dangerous than Proceed Surgical Mesh. In particular, they allege that "Defendants were aware that **adding Vicryl and other additional layers to the Proceed Surgical Mesh to create Proceed Ventral Patch, would increase the intensity and duration of inflammation and foreign body response (FBR)**, thus increasing fibrinous exudate." (See Ex. G: Bednarczyk Compl., at ¶ 35, emphasis added).

At the same time, Plaintiffs also claim that components found in both the Proceed products, but not Prolene Hernia System, render those products uniquely more dangerous than products without those components. For example, Plaintiffs claim that Oxidized Regenerated Cellulose, included in the composition of both Proceed products but not the Prolene product, "had pores which were too large to prevent adhesion formation" and that "increased adhesion formation would result in increased mesh shrinkage." (See Ex. H: Wetch Compl., at ¶¶ 23-26; Ex. G: Bednarczyk Compl., at ¶¶ 29-31). Plaintiffs further allege that "Defendants were aware that the ORC layer in the Proceed was ineffective at preventing adhesion formation to polypropylene over a decade before Defendants brought the Proceed to market." (See Ex. H: Wetch Compl., at ¶ 42; Ex. G: Bednarczyk Compl., at ¶ 49).

Conversely, Plaintiffs allege that the design of the Prolene Hernia System made it more unsafe than any other products. In this regard, Plaintiffs claim the Prolene product is different from any other product used: "The Prolene Hernia System has a

unique design, which incorporates two distinct layers of polypropylene connected by a central polypropylene tube. ***This design is not used in any other hernia repair product sold in the United States.***” (See, e.g., Ex. I: Wilson Compl., at ¶ 31, emphasis added). Plaintiffs further allege that the unique design of Prolene Hernia System increases the risk of injury and makes treatment more difficult: “the multi-layer polypropylene mesh occupied two inguinal compartments instead of one, increasing the intense inflammatory and chronic foreign body response; . . . When an implanted Prolene Hernia System fails, the complications are harder to treat. Further, its eventual explantation results in large amounts of tissue loss due to the Prolene Hernia System’s occupying of two inguinal compartments.” (See, e.g., *id.* at ¶¶ 32-33).

Plaintiffs’ application thus ignores their own misguided characterization of these products, but also glosses over the fact that all three of the products at issue were introduced at different times over the course of over a decade. Prolene Hernia System was introduced in 1997; Proceed Surgical Mesh was introduced in 2004; and Proceed Ventral Patch in 2008. The information available to Ethicon and surgeons at each of those times was different, a consideration that directly impacts issues such as design defect, adequacy of warnings, and the application of the learned intermediary doctrine.

The different histories of the products also mean that there will likely be significant variations in the witnesses having relevant knowledge regarding the products. Witnesses involved in the development of Prolene Hernia System prior to its launch in 1997 would be different from those involved with Proceed Surgical Mesh and Proceed Ventral Patch products introduced 7 and 11 years later. The likelihood of having different witnesses is vastly increased by the fact the different products were produced in different countries.

It is important to consider the nature, composition, history, and development of these particular products alongside the specific allegations raised by Plaintiffs, which make clear that MCL designation is inappropriate under these circumstances.

ARGUMENT

I. The Court Should Deny Plaintiffs’ Application Because the Cases Do Not Meet the Criteria for an MCL Designation.

The Court should deny Plaintiffs’ application to establish an MCL for any or all of the three hernia mesh products included in their application and permit the cases to proceed individually in their current venue, which has the judicial resources and support staff to handle these actions. Creating an MCL under these circumstances would lead to a flood of litigation by foreign plaintiffs raising meritless claims and seeking to take advantage of New Jersey’s centralized litigation process; it would not further the goals and policy of Rule 4:38A and AOC Directive #08-12.

In determining whether centralization of cases is warranted, the Court applies the factors contained in AOC Directive #08-12. Specifically, they include whether the cases possess, among other things, the following characteristics: Many claims with common recurrent issues of law and fact "that are associated with a single product"; a large number of parties; and a high degree of commonality among injuries or damages among plaintiffs. See AOC Directive #08-12, at 1-2 (emphasis added). The Court also should consider administrative factors including, but not limited to: whether there is a risk that centralization will unreasonably delay the progress, increase the expense, or complicate the processing of any action; whether centralized management is fair and convenient to the parties, witnesses, and counsel; whether coordinated discovery would be advantageous; and whether there are related matters pending in federal court or in other state courts that require coordination with a single New Jersey judge. Id.

Here, the administrative factors are particularly relevant to the determination that MCL designation is unwarranted for these products. Unlike Physiomesh, there are no federal court MDLs involving these products, and Plaintiffs have not demonstrated that there are a significant number of cases that are being filed across the country which would, in turn, support the position that there is a legitimate need for an MCL in New Jersey. There is also a significant risk that centralization will unreasonably delay the progress and complicate the processing of these actions that are currently pending in the Superior Court. Accordingly, the administrative factors are not met.

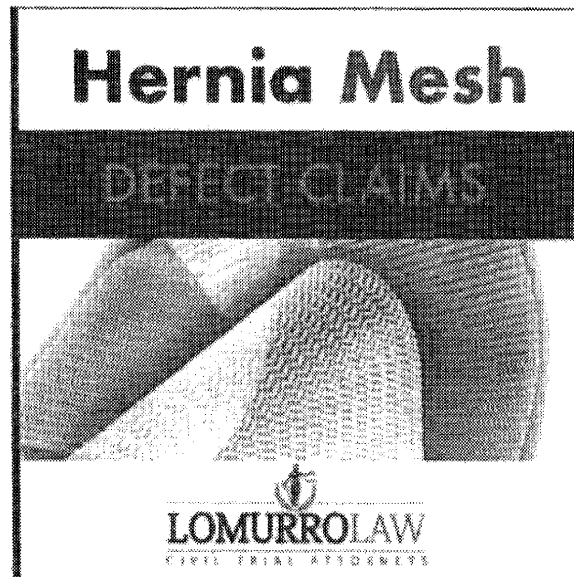
In addition, there are distinct issues of law and fact within and among the cases involving these different products that make an MCL inappropriate. Specifically, as noted above, different doctors use each mesh product differently, and for different purposes with respect to their overall treatment of hernias. As such, each individual case is uniquely different from another case, despite the fact that they may involve the same product.

Moreover, the creation of the proposed MCL would attract meritless cases. The Proceed Surgical Mesh, Proceed Ventral Patch, and Prolene Hernia Mesh products are proven products that have been on the market for many years, remain on the market, and are recommended and implanted by physicians to this day. The reality is that all hernia repair surgeries, including those using mesh, can lead to complications. The mere fact that there are patients with these devices that have experienced complications does not establish that these devices are defective. Indeed, like all widely sold medical products used to treat medical conditions, patients can experience complications in the absence of any defect in the product.

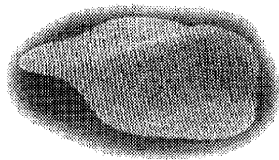
Rather than advertising for Physiomesh products only, the subject of the federal MDL, Plaintiffs' attorneys across the country have cast a wide net, publishing general advertisements related to "Hernia Mesh" or "Hernia Surgical Mesh." In all

likelihood, clients responded who may have thought they had Physiomesch but who, in fact, received other products. Alternatively, due to the vague and general use of the term "hernia mesh," the lawyers received inquiries from anyone who was ever implanted with hernia mesh. Thus, the allegations involving these cases are highly attenuated.

The following are samples of advertisements posted on publicly available social media pages that depict Plaintiffs' counsel's conduct in using broad language to attract plaintiffs with meritless claims.⁵



Hernia Mesh
DEFECT CLAIMS



LOMURROLAW
CIVIL TRIAL ATTORNEYS

Freehold, NJ



⁵ See <https://www.facebook.com/pages/category/Lawyer---Law-Firm/Hernia-Mesh-Defects-374846209633625/>.

It is evident that mere creation of an MCL will attract more complaints by plaintiffs nationwide seeking to take advantage of litigating in an MCL, which allows plaintiffs and their counsel to "park" cases with no factual or legal basis for recovery and do little to no work on those cases, in hopes of collecting from a global settlement in the future. In fact, there is evidence of a very concerning and growing trend of litigation funding companies and marketing firms targeting individuals treating with medical devices to lure them into undergoing unnecessary surgery so that those individuals will be more lucrative Plaintiffs in a coordinated MCL or MDL against medical device companies.⁶

In the Accutane litigation, this State saw firsthand how the establishment of an MCL can result in a flood of meritless claims. After the creation of the Accutane MCL, there was a significant increase in the number of cases filed, growing to approximately 7,800 cases. However, nearly all of those cases were either dismissed via dispositive motions or voluntarily dismissed by the plaintiffs. The same will hold true here in the event an MCL is created and a wave of copycat Plaintiffs file baseless lawsuits without any legally cognizable injuries.

Similarly, jurisdictions across the country have experienced the same outcomes when they establish a centralized management or multidistrict litigation. For example, in the Baycol litigation, initially there were a moderate number of cases alleging that the medication caused patients a higher risk of rhabdomyolysis. After the MDL was established in the United States District Court for the District of Minnesota, tens of thousands of cases were filed, alleging complications other than rhabdomyolysis that clogged the courts. Ultimately, the parties resolved only the cases involving rhabdomyolysis.

Additionally, after the Chinese-manufactured drywall products liability MDL was created, plaintiffs started bringing lawsuits against American drywall manufacturers, making similar arguments. Plaintiffs bringing claims against American drywall manufacturers sought centralization of four actions pursuant to 28 U.S.C. § 1407. There, Plaintiffs' motion promised "thousands" of cases. The United States Judicial Panel on Multidistrict Litigation denied the plaintiffs' motion, finding that the plaintiffs "have not convinced us that any efficiencies would outweigh the multiple individualized issues, including ones of liability and causation, that these actions appear to present." (Ex. J: Order Denying Transfer, In re: American-Manufactured Drywall Prod. Liab. Litig., June 8, 2010). After the denial, no meaningful litigation developed.⁷

⁶ See, e.g., Matthew Goldstein, How Profiteers Lure Women into Often-Unneeded Surgery, N.Y. Times, Apr. 14, 2018, available at <https://www.nytimes.com/2018/04/14/business/vaginal-mesh-surgery-lawsuits-financing.html>.

⁷ In addition, many lawsuits filed after an MDL is established are later subject to dismissal on procedural grounds for failing to provide fundamental information about the plaintiffs' claims. For example, in the Abilify MDL, hundreds of plaintiffs who filed lawsuits after the establishment of the

In sum, establishing an MCL here for these hernia mesh products that are still on the market will result in a flood of litigation that will unreasonably delay the progress and complicate the processing of the actions already pending in the Superior Court. This is not only bad for Defendants headquartered in this State, but it is also very harmful to the Court system because of the time and expense of an MCL, including the toll on New Jersey citizens forced to sit on juries in cases involving out-of-state plaintiffs. Accutane, Baycol, and the Drywall litigations are just some examples that demonstrate how significant judicial resources will be expended to resolve baseless lawsuits filed solely because the opportunity was provided through an MCL or MDL. Here, there is no need to upend the current state of the litigation. There are only a few firms representing Plaintiffs and the parties will be able to work well together regarding these actions. Accordingly, Plaintiffs' application should be denied.

II. In the Alternative, Any MCL Created Should be Limited to Cases Involving Proceed Surgical Mesh and Proceed Ventral Patch Products.

In the event the Court is inclined to establish another MCL – which it should not – the resulting MCL should be limited to cases involving Proceed Surgical Mesh and Proceed Ventral Patch products. It should not include the Prolene Hernia System.

As set forth in detail above, there are significant differences between all three products, which become even more significant when comparing the Proceed products with the Prolene Hernia System. Most notably, unlike the Proceed products, the Prolene Hernia System is not multi-layered, it is not absorbable and is typically used for inguinal repairs. Plaintiffs also claim that components found in both Proceed products, but not the Prolene Hernia System, such as Oxidized Regenerated Cellulose, render those products uniquely more dangerous. Plaintiffs further allege that the unique design of the Prolene product makes it more unsafe than other products and that it increases the risk of injury and makes treatment more difficult. (See, e.g., Ex. I: Wilson Compl., at ¶¶ 31, 32). Moreover, the Proceed products were introduced more recently, within a few years of each other in 2004 and 2008, while the Prolene Hernia System was introduced more than 20 years ago in 1997.

Plaintiffs' application staunchly fails to satisfy the criteria for establishing an independent MCL for cases involving the Prolene Hernia System. Out of all of the complaints involving hernia mesh products referenced in Plaintiffs' application, cases involving the Prolene Hernia System make up less than 25% – approximately 49 out of 205 cases. All of the other cases involve a Proceed product. (See Pls.' Ex. A: Case Listing). Moreover, the number of complaints filed involving the Prolene

MDL failed to provide requested plaintiff profile forms. The forms requested basic information such as the plaintiff's date of birth, when they used the drug, and the name of their prescribing physician. See Nathan Hale, Drugmakers Aim to Bump Delinquent Plaintiffs in Abilify MDL, Law360, Jan. 16, 2019, available at <https://www.law360.com/florida/articles/1119387/drugmakers-aim-to-bump-delinquent-plaintiffs-in-abilify-mdl>

Hernia System has lagged behind the filings of cases involving the Proceed products, which supports rejecting the creation of an MCL for this particular product.

Plaintiffs indicated in their first MCL application in February 2018 that "several hundred more cases" will be filed with respect to Ethicon's hernia mesh products. Yet, that has not been true for cases involving the Prolene Hernia System. Indeed, in February 2018 there were 7 cases involving the Prolene Hernia System that were the subject of Plaintiffs' prior application. Almost one year later, only 42 additional cases have been filed – a far cry from the "several hundred" plaintiffs promised.

Moreover, the jurisdiction in which the Prolene Hernia System cases are currently venued has adequate staffing and judicial resources to handle the existing and potential case load for the relatively modest number of cases involving the Prolene Hernia System on an individual basis. Indeed, that is one of the stated reasons why the cases involving hernia mesh products were transferred to that vicinage. (See Ex. E: Transcript of Motion and Opinion, dated Sept. 28, 2018, at 36:22-37:2).

Therefore, while Defendants submit that the Court should not establish another MCL, in the event it is inclined to do so, it should be limited to cases involving the Proceed products only.

III. Potential MCL Venues

AOC and court rules set forth certain factors that should be considered in determining which venue an MCL should be assigned. Specifically, the MCL Guidelines and Criteria for Designation, as promulgated by Directive #08-12 and in accordance with Rule 4:38A, provide that "[i]ssues of fairness, geographical location of parties and attorneys, and the existing civil and multicounty litigation caseload in the vicinage" are factors to be considered in determining where to assign an MCL.

In making its determination between the three MCL venues available in New Jersey, the following should be taken into consideration:

- Atlantic County – As noted in Plaintiffs' application, the Physiomes MCL is already pending in Atlantic County before Judge Porto. In the event another MCL is created, the Court and the parties would benefit from coordination with the Physiomes MCL in this venue. In addition, Atlantic County has the least number of active MCLs pending at this time.
- Bergen County – Bergen County is a large vicinage in Northern New Jersey that has the judicial resources and staffing needed to handle an MCL. Plaintiffs intentionally sought out Bergen County with the intention that Judge Harz would preside over an MCL. Nevertheless, Judge Polifroni advised Plaintiffs that Bergen County was not the most suitable venue and Judge

Harz appropriately transferred all cases involving Ethicon's hernia mesh products to Middlesex County.

- Middlesex County – Middlesex County is currently home to the most active and complex MCLs pending at this time.

Defendants defer to the Court with respect to the location of an MCL – if one is created – and offer the above information to assist the Court in making its determination.

CONCLUSION

In conclusion, Defendants oppose the creation of any MCL for cases involving hernia mesh products other than Physiomesh. There is no question that creation of an MCL for these products would only serve to trigger the mass filing of baseless lawsuits by out-of-state litigants looking to take advantage of coordinated litigation that would drain the resources of the judiciary and the State. As such, this Court should deny Plaintiffs' request to establish an MCL for the Proceed Surgical Mesh, Proceed Ventral Patch, and Prolene Hernia System products. If, however, the Court is inclined to create another MCL, it should be limited to cases involving Proceed products (Proceed Surgical Mesh and Proceed Ventral Patch), as those products were conceived and designed within a few years of one another and are far more numerous than cases involving the Prolene Hernia System.

Respectfully submitted,



David R. Kott

cc: Joshua Kincannon, Esq. (via regular mail and email)
Kelsey Stokes, Esq. (via regular mail and email)
Adam Evans, Esq. (via regular mail and email)
Robert Price, Esq. (via regular mail and email)
Michael Daly, Esq. (via regular mail and email)
Tobias Millrood, Esq. (via regular mail and email)
James Barry, Esq. (via regular mail and email)
Robert Kinsman, Esq. (via regular mail and email)
Kelly S. Crawford, Esq. (via email)

SUPREME COURT OF NEW JERSEY

On application made pursuant to Rule 4:38A and the Multicounty Litigation Guidelines promulgated by Directive# 08-12 in accordance with that Rule, it is hereby ORDERED that all pending and future New Jersey state court actions against Ethicon, Inc. and Johnson & Johnson, alleging injuries as a result of use of Proceed® Surgical Mesh and Proceed® Ventral Patch hernia mesh products be designated as multicounty litigation ("MCL") for centralized management purposes; and

It is FURTHER ORDERED that any and all such complaints that have been filed in the various counties and that are under or are awaiting case management and/or discovery shall be transferred from the county of venue to the Superior Court, Law Division, Atlantic County and that, pursuant to N.J. Const. (1947), Art.VI, sec.2, par.3, the provisions of Rule 4:3-2 governing venue in the Superior Court are supplemented and relaxed so that all future such complaints, no matter where they might be venued, shall be filed in Atlantic County; and

It is FURTHER ORDERED that Superior Court Judge John C. Porto shall oversee management and trial issues for such cases and may, in his discretion, return such cases to the original county of venue for disposition, and

It is FURTHER ORDERED that no Mediator or Master may be appointed in this litigation without the express prior approval of the Chief Justice.

For the Court,



Chief Justice

Dated: March 12, 2019


NOTICE TO THE BAR

MULTICOUNTY LITIGATION – PROCEED® SURGICAL MESH AND PROCEED® VENTRAL PATCH LITIGATION

A previous Notice to the Bar requested comments on an application for multicounty litigation (MCL) designation of New Jersey state-court litigation alleging injuries resulting from use of certain hernia mesh products. This Notice is to advise that the Supreme Court, after considering the application and the comments received, has determined to designate only the cases involving allegations of injuries from use of **Proceed® Surgical Mesh and Proceed® Ventral Patch** as multicounty litigation. The Court determined not to designate litigation involving the **Prolene® Hernia Mesh System** as multicounty litigation. The Court has assigned the Proceed® MCL to Atlantic County for centralized case management by Superior Court Judge John C. Porto.

Published with this Notice is the Supreme Court's March 12, 2019 Order. This Order is posted in the Multicounty Litigation Center <http://www.njcourts.gov/attorneys/mcl/index.html> on the Judiciary's website (www.njcourts.gov). Judge Porto's Initial Case Management Order will be posted in the Multicounty Litigation Center.

Questions concerning this matter may be directed to Melissa A. Czartoryski, Chief, Civil Practice Division, Administrative Office of the Courts, Hughes Justice Complex, P. O. Box 981, Trenton, New Jersey 08625-0981; telephone: (609) 815-2900 ext. 54901; e-mail address: Melissa.Czartoryski@njcourts.gov.



Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: May 1, 2019

DENIED*

JAMES REED,

Plaintiff,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MIDDLESEX COUNTY

v.

DOCKET NO.: MID-L-6318-18

JOHNSON & JOHNSON and
ETHICON, INC.,

Defendants.

CIVIL ACTION

**ORDER OF CONSOLIDATION
PURSUANT TO R. 4:38-1**

This matter having been brought to the Court for an entry of an Order consolidating the PHS cases, and the Court having found that these are complex product liability actions that would benefit from consolidation;

It is on this 16th day of August, 2019,

ORDERED that:

1. ~~The PHS cases listed on Exhibit ^B ~~A~~ are hereby consolidated pursuant to R. 4:38-1, and~~
2. ~~Assigned to the Hon. _____ J.S.C. for administration and trial;~~
3. ~~A copy of this Order shall be included in the deputy clerk of the Superior Court's file in each separate action listed in Exhibit ^B ~~A~~ and it is further Ordered that.~~
4. ~~Posting of this entered order on eCourts shall constitute service thereof.~~ IT IS FURTHER ORDERED that service of this Order shall be deemed effectuated upon all parties upon its upload to eCourts. Pursuant to Rule 1:5-1(a), movant shall serve a copy of this Order on all parties not served electronically within seven days of the date of this Order.

/s/ Jamie D. Happas, P.J.Cv.

X Opposed

HONORABLE GARY WOLINETZ, J.S.C.

Pursuant to Ian Ratzlaff's letter and correspondence dated 8/13/19 counsel shall comply with Directive #02-19 if they want to have all 112 cases managed by the same Judge. Without Supreme Court classification as multicounty litigation, these cases will remain assigned to different pretrial judges, based on the last two digits of the Middlesex County docket number. In any future MCL application counsel must specifically address all of the criteria to be applied in determining whether designation as Multicounty litigation is warranted as set forth in Directive #02-19.



Neutral

As of: October 18, 2019 3:38 PM Z

In re Mentor Corp. Obtape Transobturator Sling Prods.

United States District Court for the Middle District of Georgia, Columbus Division

September 7, 2016, Decided; September 7, 2016, Filed

MDL Docket No. 2004 4:08-MD-2004 (CDL)

Reporter

2016 U.S. Dist. LEXIS 121808 *; 2016 WL 4705827

IN RE MENTOR CORP. OBTAPE
TRANSOBTURATOR SLING PRODUCTS. LIABILITY
LITIGATION

Subsequent History: Summary judgment granted by *In re Mentor Corp. ObTape Transobturator Sling Prods. Liab. Litig.*, 2016 U.S. Dist. LEXIS 122680 (M.D. Ga., Sept. 9, 2016)

Prior History: *In re Mentor Corp. ObTape Transobturator Sling Prods. Liab. Litig.*, 2016 U.S. Dist. LEXIS 183331 (M.D. Ga., Sept. 2, 2016)

Counsel: [*1] For In re Mentor Corp. Obtape Transobturator Sling Products Liability Litigation: JOHN Q LEWIS, LEAD ATTORNEY, TUCKER ELLIS, Cleveland, OH USA; MOLLIE F BENEDICT, LEAD ATTORNEY, PRO HAC VICE, Tucker Ellis LLP, Los Angeles, CA USA; SARAH LOUISE BUNCE, LEAD ATTORNEY, PRO HAC VICE, Cleveland, OH USA; Dustin Bradley Rawlin, Tucker Ellis LLP, Cleveland, OH USA.

For All Plaintiffs, Plaintiff: A DONALD C DISCEPOLO, LEAD ATTORNEY, PRO HAC VICE, Baltimore, MD USA; BENJAMIN A BERTRAM, LEAD ATTORNEY, PRO HAC VICE, Kansas City, MO USA; DEREK H POTTS, LEAD ATTORNEY, PRO HAC VICE, Houston, TX USA; DOUGLAS ROBERT PLYMALE, LEAD ATTORNEY, PRO HAC VICE, New Orleans, LA USA; JASON A ITKIN, LEAD ATTORNEY, PRO HAC VICE, Houston, TX USA; JOSEPH A OSBORNE, LEAD ATTORNEY, PRO HAC VICE, West Palm Beach, FL USA; KEESHA D MIDDLETON, LEAD ATTORNEY, PRO HAC VICE, Jackson, MS USA; KURT B ARNOLD, LEAD ATTORNEY, Houston, TX USA; LEE B BALEFSKY, LEAD ATTORNEY, PRO HAC VICE, Philadelphia, PA USA; MARK S THETFORD, LEAD ATTORNEY, PRO HAC VICE, EDWARDS LAW FIRM, Tulsa, OK USA; MARTIN J PHIPPS, LEAD ATTORNEY, PRO HAC VICE, San Antonio, TX USA; MICHELLE L TIGER, LEAD ATTORNEY, PRO HAC

VICE, Philadelphia, PA USA; NOAH M WEXLER, [*2] LEAD ATTORNEY, PRO HAC VICE, Houston, TX USA; RICHARD W LANGERMAN, LEAD ATTORNEY, PRO HAC VICE, Phoenix, AZ USA; SHEILA M BOSSIER, LEAD ATTORNEY, PRO HAC VICE, Jackson, MS USA; CAROLINE HOLLINGSWORTH, PRO HAC VICE, Birmingham, AL USA; CHRISTOPHER W CANTRELL, PRO HAC VICE, San Diego, CA USA; CLELL CALVIN WARRINER, III, PRO HAC VICE, West Palm Beach, FL USA; DOUGLASS A KREIS, PRO HAC VICE, Pensacola, FL USA; EDWARD BLIZZARD, PRO HAC VICE, Blizzard & Nabers LLP, Houston, TX USA; HOLLY W GIBSON, PRO HAC VICE, Houston, TX USA; Kent G. Whittemore, The Whittemore Law Group, PA, St Petersburg, FL USA; Lowell W Finson, PRO HAC VICE, El Segundo, CA USA; Mark A DiCello, The DiCello Firm, Mentor, OH USA; Michael H Bowman, PRO HAC VICE, Chicago, IL USA; Michael I. Starkman, Law Offices of Michael I. Starkman, Northfield, IL USA; PATRICIA L CAMPBELL, PRO HAC VICE, POTTS LAW FIRM, Kansas City, MO USA; ROBERT E PRICE, PRO HAC VICE, Pensacola, FL USA.

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Judges: CLAY D. LAND, CHIEF UNITED STATES DISTRICT JUDGE.

Opinion by: CLAY D. LAND

Opinion

ORDER

The Court has spent considerable time in this MDL deciding summary judgment motions when plaintiff's counsel should have known that no good faith basis existed for pursuing the claim to the summary judgment stage. Some of these cases involved claims that were clearly barred by the applicable statute of limitations. In others, plaintiff's counsel was unable to identify a specific causation expert or point to other evidence to create a genuine factual dispute on causation. And in some cases, counsel threw in the towel and did not even bother to respond to the summary judgment motion. Nevertheless, the Court had to waste judicial resources deciding motions in cases that should have been dismissed by plaintiff's counsel earlier—cases that probably should never have been brought in the first place. Enough is enough.

Counsel of record in any case in this MDL are on notice that in future orders granting summary judgment in which no good faith basis existed for maintaining the action through the summary judgment stage, the Court intends to include an addendum in the order requiring [*4] counsel to show cause why sanctions should not be imposed. Thus it would behoove counsel to take a close look at your cases and decide whether you truly have a good faith basis for proceeding; and if you do not, dismiss the case. The Court certainly understands that the mere granting of summary judgment does not warrant sanctions. But if the deadline for identifying experts has expired and you still have no idea how you are going to prove specific causation, then failing to promptly recognize that your case is no longer viable places you at risk of being sanctioned. Similarly, if you did not file the action until eight years after your client's doctor excised the Obtape and informed your client that it was causing her problems, you may face a serious challenge showing cause as to why sanctions should not be imposed.

OBITER DICTUM

Consolidation of cases for pretrial purposes pursuant to the multidistrict litigation statute, 28 U.S.C. § 1407, is hailed by many as the best procedure for the efficient resolution of aggregate tort litigation. Comprising a growing percentage of the federal civil docket, multidistrict consolidations seem to be the norm for cases involving common issues of law and fact. With [*5] the small number of remands back to the transferor courts for trial, many of the most significant civil disputes on the federal docket are being resolved in a distant venue by a hand-picked judge, typically

through some type of global settlement.¹

It has been the undersigned's experience that notwithstanding the many benefits of MDL consolidation, such consolidations are not without unintended consequences.² Although one of the purposes of MDL consolidation is to allow for more efficient pretrial management of cases with common issues of law and fact, the evolution of the MDL process toward providing an alternative dispute resolution forum for global settlements has produced incentives for the filing of cases that otherwise would not be filed if they had to stand on their own merit as a stand-alone action. Some lawyers seem to think that their case will be swept into the MDL where a global settlement will be reached, allowing them to obtain a recovery without the individual merit of their case being scrutinized as closely as it would if it proceeded as a separate individual action. This attitude explains why [*6] many cases are filed with little regard for the statute of limitations and with so little pre-filing preparation that counsel apparently has no idea whether or how she will prove causation. It also may explain why some lawyers seek to withdraw from representation when a global settlement is not forthcoming, leaving their clients abandoned to proceed pro se in a complex MDL proceeding.³ This phenomenon produces the perverse result that an MDL, which was established in part to

¹ See generally Elizabeth Chamblee Burch, *Remanding Multidistrict Litigation*, 75 *La. L. Rev.* 399 (2014).

² The MDL presently being managed by the undersigned began with twenty-two cases. Due to subsequent tag along transfers, it exploded to more than 850 cases, which explosion appears to have been fueled, at least in part, by an onslaught of lawyer television solicitations. To date, the Court has decided approximately 100 separate summary judgment motions, tried three bellwether trials, and made numerous evidentiary rulings. Forty-two cases have been remanded to the transferor [*7] courts or transferred to the district court where venue is proper for trial. 458 cases have been dismissed by stipulation of the parties or order of dismissal following a notice of settlement. Seventy-four have been dismissed voluntarily by the plaintiffs via notice of voluntary dismissal or a motion to dismiss.

³ Although some motions for withdrawal may be legitimate, this Court has generally informed counsel that it will suggest remand for any case where withdrawal is requested to let the transferor court decide the motion given that the transferor court will ultimately have to try the case with a pro se party. This approach has sometimes resulted in a reconciliation between client and lawyer mooted the motion to withdraw.

manage cases more efficiently to achieve judicial economy, becomes populated with many non-meritorious cases that must nevertheless be managed by the transferee judge—cases that likely never would have entered the federal court system without the MDL.

The undersigned has not conducted any empirical analysis to support the thesis suggested in this order, partly because the undersigned has been preoccupied with deciding summary judgment motions in marginal cases. But based on fifteen years on the federal bench and a front row seat as an MDL transferee judge on two separate occasions, the undersigned is convinced that MDL consolidation for products liability actions does have the unintended consequence of producing [8] more new case filings of marginal merit in federal court, many of which would not have been filed otherwise. The Court hastens to add that the overall benefits of MDL consolidation may nevertheless justify the continued liberal application of § 1407; but if the undersigned's intuition is correct—that a material number of non-meritorious cases are being filed *because* of consolidation—perhaps caution is also warranted. At a minimum, transferee judges should be aware that they may need to consider approaches that weed out non-meritorious cases early, efficiently, and justly. The undersigned has struggled with the best way to accomplish that. Hopefully, the robust use of Rule 11 will help.

IT IS SO ORDERED, this 7th day of September, 2016.

/s/ Clay D. Land

CLAY D. LAND

CHIEF U.S. DISTRICT COURT JUDGE

MIDDLE DISTRICT OF GEORGIA

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FILED

OCT 17 2019

JOHN C. PORTO, J.S.C.

Attorneys for Plaintiffs

IN RE PROCEED MESH LITIGATION
(Proceed® Surgical Mesh and Proceed®
Ventral Patch Hernia Mesh)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ATLANTIC COUNTY
MASTER CASE NO. ATL-L-794-19
CASE NO. 630

Civil Action

CASE MANAGEMENT ORDER NO. 9

**ORDER REGARDING MANAGEMENT OF TIMEKEEPING, COST
REIMBURSEMENT AND RELATED COMMON BENEFIT ISSUES**

This Matter having come before the Court at the July 18, 2019 case management conference, Plaintiffs have submitted this Order to the Court to establish guidelines to apply to assessments against settlements and verdicts obtained from the date of this Order going forward, and applications to this Court by attorneys for payment of common benefit fees or expenses,

from the assessments. The Court may issue additional procedures and guidelines in the future, if appropriate.

For the foregoing reasons, and in recognition of the need for a mechanism to assess cases and reimburse Plaintiffs' counsel, as appropriate, for common benefit time and expenses, and for good cause shown;

IT IS on this 17th day of October, 2019, Ordered:

I. Scope of this Order

This Order is entered to provide for the fair and equitable sharing among plaintiffs, and their counsel, of the burden of services performed and expenses incurred by attorneys acting for the common benefit of all plaintiffs in this complex litigation.

A. Governing Principles and the Common Benefit Doctrine

The governing principles are derived from the United States Supreme Court's common benefit doctrine, as established in *Trustees v. Greenough*, 105 U.S. 527 (1881); refined in, *inter alia*, *Central Railroad & Banking Co. v. Pettus*, 113 U.S. 116 (1884); *Sprague v. Ticonic National Bank*, 307 U.S. 161 (1939); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375 (1970); *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980); and approved and implemented in the MDL context, in *inter alia*, *In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Prod. Liab. Litig.*, 582 F.3d 524 (3d Cir. 2009); *In re Benicar (Olmesartan) Prod. Liab. Litig.*, MDL No. 15-md-2606 (D.N.J. Aug. 15, 2017); *In re Invokana (Canagliflozin) Prod. Liab. Litig.*, MDL No. 16-md-02750 (D.N.J. Mar. 21, 2017); *In re Avandia Marketing, Sales Practices and Products Liability Litig.*, MDL No. 07-md-01871 (E.D. Pa. Oct. 19, 2012); *In re Air Crash Disaster at Florida Everglades on December 29, 1972*, 549 F.2d 1006, 1019-21 (5th Cir. 1977); and *In re MGM Grand Hotel Fire Litigation*, 660 F. Supp. 522, 525-29 (D. Nev. 1987).

The common benefit principles expressed in the federal context mirror those espoused in New Jersey Multicounty Litigations (MCLs), including, *inter alia*, *In re: Stryker Rejuvenate & ABG /I Modular Hip Implant Litigation*, MCL Case No. 296, Master Docket No. BER-L-0936-13, Superior Court of New Jersey, Bergen County; *In re: Vioxx Litigation*, MCL Case No. 619, Superior Court of New Jersey, Atlantic County; and *In re: Pelvic Mesh/Gynecare Litigation*, MCL 291, Superior Court of New Jersey, Bergen County.

Common benefit work product includes all work performed for the benefit of all plaintiffs, including pre-trial matters, discovery, trial preparation, a potential settlement process, and all other work that advances this litigation to conclusion.

B. Application of this Order

This Order applies to all cases now pending, or later filed in, transferred to, or removed to this Court and treated as part of the coordinated proceeding known as *In re: Proceed Mesh Litigation*, MCL 630.

This Order further applies to all plaintiffs' attorneys who are counsel, co-counsel, or have any type of fee interest in cases now pending, or later filed in, transferred to, or removed to this Court, regardless of whether the plaintiff's attorney signs the "Participation Agreement" (for all such attorneys this Order shall apply to every case filed in any jurisdiction—as well as any unfiled or tolled cases—in which they or their law firms have any fee interest); and to each attorney and law firm who represents a plaintiff with a case filed in any other jurisdiction who benefits from common benefit work prepared in this litigation. To the extent a common benefit order is issued in any other venue, this Court and the PEC, guided by the principles of the common benefit doctrine, will take steps to ensure the common benefit order entered in the other venue will not apply to the cases that are subject to this Order.

C. Participation Agreement

Exhibit A, attached to this Order and incorporated by reference, is a voluntary Participation Agreement between: (1) the Plaintiffs' PEC ("PEC"), members of any future-appointed Plaintiffs' Steering Committee ("PSC"), and other plaintiffs' attorneys who perform common benefit work in connection with MCL 630; and (2) plaintiffs' attorneys who elect to sign the Participation Agreement. The Participation Agreement is a private and cooperative agreement between plaintiffs' attorneys only; and not Defendants or Defendants' counsel.

All plaintiffs' attorneys who have Ethicon Proceed Hernia Mesh cases pending in the MCL and in any federal court who want to become Participating Counsel shall, within 60 days of this Order, execute the Participation Agreement. All plaintiffs' attorneys with newly filed Ethicon Proceed cases shall, within 100 days of filing a Complaint in the MCL, execute the Participation Agreement. Further, all members of the PEC shall execute the Participation Agreement within 30 days of this Order.

Any plaintiffs' attorney who does not yet have an Ethicon Proceed case filed in this MCL, any other state court, or federal court and who wants to become a Participating Counsel may also execute the Participation Agreement and shall do so in a timely manner.

Failure to execute the Participation Agreement indicating that an attorney will be a Participating Counsel, in a timely manner, may result in higher percentages for common benefit assessment as a result of such later participation, absent good cause or special circumstance.

Participating Counsel shall be entitled to receive all the common benefit work product performed and generated by the PEC, PSC, and other Participating Counsel. Participating Counsel are also permitted to perform common benefit work. However, they shall be governed

by the requirements, guidelines and perimeters of this Order, as well as CMO No. 2 in this regard.

Counsel who choose not to execute the Participation Agreement are not entitled to receive common benefit work product and may be subject to an increased assessment on all Ethicon Proceed Hernia Mesh cases in which they have a fee interest if they receive common benefit work product or otherwise benefit by the work performed by the PEC, PSC, and other Participating Counsel.

Duly executed Participation Agreements shall be emailed to kstokes@fleming-law.com and maintained by Kelsey L. Stokes on behalf of the PEC.

II. Creation of the Common Benefit Fee Committee

At this time, the Court hereby appoints Kelsey L. Stokes and Joshua S. Kincannon as common benefit liaison co-counsel, recognizing that attorneys Stokes and Kincannon have guided this litigation from its inception, and have the most detailed knowledge of the work performed, expenses paid; interaction and involvement with related litigation around the country, and the value of that work in advancing the litigation on behalf of all plaintiffs.

At the appropriate time, this Court, with the input of the common benefit liaison co-counsel, shall appoint a Common Benefit Fee Committee. The Fee Committee shall be charged in the collection, maintaining and review of common benefit time and expenses as submitted by Participating Counsel. The Fee Committee shall further be charged with development of a plan and process for the review, audit and ultimate recommendation of any award for common benefit legal fees and reimbursement of common benefit expenses that were incurred. The Common Benefit Fee Committee shall determine on its own the most fair and efficient manner by which to

evaluate all of the time and expense submissions in making any recommendation to a special master and/or this Court, including the appointment of a Special Master.

III. Plaintiffs' Litigation Fee and Expense Funds

A. Establishing the Fee and Expense Funds

At an appropriate time, by subsequent Order of this Court, the Court will appoint an escrow agent, this entity will be responsible for each of the following: (1) creating two interest-bearing accounts, the first account as the "MCL No. 630 Fee Fund," and the second account as the "MCL No. 630 Expense Fund", hereinafter collectively referred to as "The MCL CB Fund Accounts"; (2) receiving and disbursing funds; (3) keeping detailed records of all deposits and withdrawals; and (4) providing quarterly account statements to the Court and/or its designee as well as the PEC.

B. Payments into the Fee and Expense Funds

1. General Standards

All plaintiffs and their attorneys who are subject to this Order and who agree to settle, compromise, dismiss, or reduce the amount of a claim or, with or without trial, recover a judgment for monetary damages or other monetary relief, including such compensatory and punitive damages, with respect to Ethicon Proceed Hernia Mesh claims are subject to an assessment of the gross monetary recovery, as provided in this Order, regardless of whether the plaintiff's attorney signs the Participation Agreement.

2. Gross Monetary Recovery

Gross monetary recovery includes any and all amounts paid to plaintiffs' counsel by Defendants through a settlement or pursuant to a judgment. In measuring the "gross monetary recovery," the parties are to (a) exclude court costs that are to be paid by the defendant; (b)

include any payments to be made by the defendant on an intervention asserted by third-parties, such as physicians, hospitals, or other healthcare providers in subrogation related to treatment of a plaintiff, and any governmental liens or obligations (e.g., Medicare/Medicaid); and (c) include the present value of any fixed and certain payments to be made in the future. The assessment shall apply to all of the cases of the plaintiffs' attorneys who are subject to this Order, whether as sole counsel or co-counsel, including cases pending in the MCL, pending in federal court, unfiled, or tolled. In other words, if a lawyer or law firm has only one case that is subject to this Order, notwithstanding all of that lawyers or law firm's cases (unfiled, tolled or filed in another venue), all cases will be subject to this Order. If a court in another venue attempts to assess a case that is subject to this Order, this Court will be guided by the underlying principles of the common benefit doctrine and, along with the PEC, will take steps to ensure that no case that is subject to this Order will be subject to any further common benefit assessment in any other venue.

3. Assessment Amount

The assessment amount will be a total of 8% (6% for attorneys' fees and 2% for expenses). The assessment represents a holdback and shall not be altered absent further order by the Court. However, if any counsel fails to timely execute the Participation Agreement, such counsel and members of his/her firm may be subject to an increased assessment. Moreover, if a Non-Participating Counsel receives common benefit work product or otherwise benefits from the common benefit work product, such counsel and the cases in which she/he has a fee interest may be subject to an increased assessment.

4. Defendants' Obligations

Upon learning of a case being filed in any federal court, Defendants Counsel shall notify the PEC of such filing within 30 days of service of the complaint upon Defendant(s), so that the PEC can notify the attorneys on the case of this Order and offer them the opportunity to become Participating Counsel.

The PEC, through its designee, shall provide the Defendants' Counsel with a list of cases and/or counsel who have executed the Participation Agreement with the PEC and/or who the PEC otherwise deems bound under this CMO. This same list shall be made available, upon request, to all plaintiffs' counsel with cases in this MCL as well as any other plaintiffs' counsel who signs the Participation Agreement. In the event there is a dispute as to whether a case should be on the list, the PEC shall seek to resolve the matter with the particular plaintiff's counsel informally, and if that is unsuccessful, upon motion to the Court.

If Defendants' counsel settle a personal injury and/or wrongful death case falling within the scope of these Proceedings, Defendants are directed to withhold the Assessment from any and all amounts paid to plaintiffs and their counsel, and to pay the Assessment directly into The MCL CB Fund Accounts. For a settlement, such payment of the Assessment shall be made concurrently with any settlement payment to the plaintiffs or their counsel. For payments made because of a judgment, such payment shall be made within 30 days of exhaustion of any appeal and/or trial right and the judgment becomes final.

5. Additional Provisions

Defendants' counsel shall provide, at least quarterly, to the PEC's designee and any Special Master appointed under Section V.F., below, notice of the names and docket numbers of the cases for which they have paid an assessment into the Funds since the last such report. Details of any individual settlement agreement, individual settlement amount and individual

amounts deposited into escrow shall be confidential and shall not be disclosed unless the Court requests that it receive that information.

If, for any reason, the Assessment is not or has not been withheld, Defendants are jointly responsible for paying the Assessment into the Funds promptly. For clarity, no Assessment is due if claims or complaints are dismissed voluntarily, as a result of motion practice or otherwise by Court order, as long as no monetary or pecuniary benefit is exchanged or considered.

IV. Common Benefit Work

A. Authorization for Compensable Common Benefit Work

Authorized Common Benefit Work includes assignments made by a PEC member and as set forth in CMO No. 2. No time spent on developing or processing individual issues in any case for an individual client (claimant) will be considered or should be submitted as Common Benefit Work, nor will time spent on any unauthorized work, unless expressly approved by the PEC as part of a bellwether process.

Examples of authorized and unauthorized work include but are not limited to:

1. Depositions: Participating Counsel may attend any deposition space permitting; however, if such counsel has not been designated as one of the authorized questioners or otherwise authorized to attend the deposition by the PEC, your time and expenses shall not be considered common benefit work, but rather considered as attending on behalf of such counsel's individual clients;
2. Periodic MCL Conference Calls: These calls are held so that individual attorneys are kept up-to-date on the status of the litigation, and non-PSC participation by listening to such calls is not common benefit work. Each attorney has an obligation to keep themselves informed about the litigation

so that they can best represent their clients, and that is a reason to listen in on those calls. The attorneys designated by the PEC to run those calls are working for the common benefit by keeping other lawyers informed and educated about the case, and their time will be considered for common benefit. Nothing in this paragraph shall be construed to prevent members of the PSC from submitting common benefit time for participation in PSC communications that are germane to all members of the PSC and are necessary to fulfill their PSC obligations;

3. Periodic Status Conferences: Regular status conferences are held so that the litigation continues to move forward and legal issues are resolved with the Court. Individual attorneys are free to attend any status conference held in open court in order to keep up-to-date on the status of the litigation and participation, however, attending and listening to such conferences is not common benefit work. Each attorney has an obligation to keep themselves informed about the litigation so that they can best represent their clients. Mere attendance at a status conference will not be considered a common benefit expense or common benefit time. The attorneys designated by the PEC to address issues that will be raised at a given status conference or requested by the PEC to be present at a status conference are working for the common benefit and their time will be considered for common benefit. Similarly, any attorney whose attendance at a status conference is specifically requested by the Judge in that case may submit their time to the Fee Committee for evaluation as common benefit time;

4. Committee Meetings or Calls: During committee phone calls or other meetings there is a presumption that only one participant per firm will qualify for common benefit time, unless otherwise authorized by the PEC;
5. Identification and Work Up of Experts: Participating Counsel are encouraged to identify experts in consultation with the PEC. If a Participating Counsel travels to and retains an expert without the knowledge and approval of the PEC they understand that the MCL may not need or use that expert, and their time and expenses may not be eligible for common benefit expenses/work;
6. Attendance at Seminars: Attendance at a seminar does not qualify as common benefit work or a common benefit expense;
7. Document Review: Only document review specifically authorized by the PEC and assigned to an attorney will be considered common benefit work. If an attorney elects to review documents that have not been assigned to that attorney by the PEC, that review is not considered common benefit. In order to conduct common benefit document review, a document reviewer must apply to, and receive written approval from the PEC.
8. Review of Pleadings and Orders: Each attorney has an obligation to keep themselves informed about the litigation so that they can best represent their clients, and review of pleadings and orders is part of that obligation. Only those attorneys designated by the PEC to review or summarize those pleadings or Orders for the MCL are working for the common benefit and their time will be considered for common benefit. All other counsel are reviewing those pleadings and orders for their own benefit and the benefit of their own

clients, and the review is not considered common benefit. Nothing in this paragraph shall be construed to prevent the PEC and the PSC from submitting common benefit time for reviewing orders of the Court that are germane to all members of the PSC and are necessary for review to fulfill their committee obligations;

9. Emails: Time recorded for reviewing emails, and providing non-substantive responses, generally is not compensable unless germane to a specific task being performed by the receiving or sending attorney or party that is directly related to that email. Thus, for example, review of an email sent to dozens of attorneys to keep them informed on a matter on which they are not specifically working would not be compensable. Each attorney has an obligation to keep themselves informed about the litigation so that they can best represent their clients and that is a reason to review emails to a larger group which involves a matter on which the recipient is not directly and immediately working. If time submissions are heavy on email review and usage with little related substantive work, that time may be heavily discounted or not compensated at all.
10. Review of Discovery Responses: Each attorney has an obligation to keep themselves informed about the litigation so that they can best represent their clients and that is a reason to review discovery responses served in this litigation. Only those attorneys designated by the PEC to review and summarize those discovery responses for the MCL are working for the common benefit and their time will be considered for common benefit. All other counsel are reviewing those

discovery responses for their own benefit and the benefit of their own clients, and the review is not considered common benefit;

11. Bellwether Trials: While the work-up of individual cases is *not* considered common benefit, in the event that a case is selected as part of an approved early preference or bellwether trial process in the MCL or participating state court proceedings, the time and expenses in trying the case (including work performed as part of the approved bellwether process) may be authorized by the PEC and thus be considered for common benefit to the extent it complies with the other provisions of this Order or Participation Agreement.

V. Plaintiffs' Counsel's Time Keeping and Submission of Time and Expense Reports

The award of common benefit attorneys' fees and cost reimbursements will be limited to "Participating Counsel" as defined herein. Furthermore, Participating Counsel shall only be eligible to receive common benefit attorneys' fees and cost reimbursement if the time expended, costs incurred and/or activity in question were in adherence with the guidelines and standards set forth within this Order regarding the submission and compensability of common benefit time and expenses.

A. General Standards

1. Time and/or Expense Incurred for the Common Benefit - These Time and Expense Guidelines are intended for activities performed and expenses incurred by counsel that relate to matters common to all claimants in MCL 630.

2. Appropriately Authorized and Approved by the Court - All time and expenses submitted must be incurred only for work authorized in advance as provided above.

3. Timely Submitted – Counsel’s time and expense submissions must be timely submitted by the 21st day of each month¹ to MCL630CB@fleming-law.com. Each time and expense submission must include a report of counsel’s time and expense records for the preceding month in the attached format (Exhibit B). The first submission is due by January 21, 2020 and should include all time and expenses incurred up through December 31, 2019.

4. The failure to secure authority to incur common benefit time and expenses or maintain and timely provide such records or to provide a sufficient description of the activity will be grounds for denying the recovery of attorneys’ fees or expenses in whole or in part.

B. Requirements

Plaintiffs’ counsel who seek to recover Court-awarded common benefit attorneys’ fees and expenses in connection with this litigation shall keep a daily contemporaneous record of their time and expenses, noting with specificity the amount of time, location, and particular activity (such as “conducted deposition of John Doe”) along with confirmation that authority was obtained to have undertaken that common benefit effort. Time entries that are not sufficiently detailed may not be considered for common benefit payments. All common benefit work time for each firm shall be maintained in a tenth-of- an-hour increment.

C. Submission

Counsel shall, by the 21st day of each month, submit to MCL630CB@fleming-law.com, a report of their time and expense records for the preceding month in the attached format (Exhibit B). Counsel shall also submit with his/her report of their time and expense records a brief summary (no more than 4 to 6 sentences) summarizing the contribution that each time keeper from that law firm made toward the common benefit and advancement of the litigation. The first

¹ If the 21st day of any given month occurs on a holiday or a weekend, the next business day shall be the deadline.

submission is due on January 21, 2020 and should include all time and expense incurred through December 31, 2019.

D. Expense Limitations

1. Travel Limitations

Only reasonable expenses will be reimbursed. Except in extraordinary circumstances, all travel reimbursements are subject to the following limitations:

- i. Airfare. For domestic flights that are less than three hours, only the price of coach seat will be reimbursed. For longer domestic flights Business/First Class airfare will be permitted as a held cost by the incurring firm. For international flights Business/First Class Airfare will *only be* reimbursed as a held cost if prior written approval by the PEC or their proxy approves same in writing. Use of a private aircraft will not be reimbursed. If Business/First Class airfare is used on domestic flights that are less than three hours of flying time, then the difference between the Business/First Class Airfare and the coach airfare must be shown on the travel reimbursement form, and only the coach fare will be reimbursed.
- ii. Hotel. Hotel room charges for the average available room rate of a business hotel, including the Hyatt, Hilton, Sheraton, Westin, and Marriott hotels, in the city in which the stay occurred will be reimbursed. Luxury hotels will not be fully reimbursed but will be reimbursed at the average available rate of a business hotel.
- iii. Meals. Meal expenses must be reasonable.
- iv. Cash Expenses. Miscellaneous cash expenses for which receipts generally are not available (tips, luggage handling, pay telephone, etc.) will be reimbursed up to \$30.00 per trip, as long as the expenses are properly itemized.
- v. Rental Automobiles. Luxury automobile rentals will not be fully reimbursed, unless only luxury automobiles were available. If luxury automobiles are selected when non-luxury vehicles are available, then the difference between the luxury and non-luxury vehicle rates must be shown on the travel reimbursement form, and only the non-luxury rate may be claimed, unless such larger sized vehicle is needed to accommodate several counselors.
- vi. Mileage. Mileage claims must be documented by stating origination point, destination, total actual miles for each trip, and the rate per mile paid by the member's firm. The maximum allowable rate will be the maximum rate allowed by the IRS.

2. Non-Travel Limitations

- i. Conference Call Telephone Charges: Common benefit conference call and must be documented as individual call expenses in order to be compensable. Copies of the telephone bills must be submitted with notations as to which charges relate to MCL 630. Such charges are to be reported at actual cost.
- ii. Shipping, Overnight, Courier, and Delivery Charges: All claimed common benefit shipping, overnight, courier or delivery expenses must be documented with bills showing the sender, origin of the package, recipient, and destination of the package. Such charges are to be reported at actual cost.
- iii. Postage Charges. A contemporaneous postage log or other supporting documentation must be maintained and submitted for common benefit postage charges. Such charges are to be reported at actual cost.
- iv. In-House Photocopy. A contemporaneous photocopy log or other supporting documentation must be maintained and submitted. The maximum copy charge is 15¢ per page and only for copying during one calendar day that exceeds 500 pages, absent special circumstances. It is encouraged that larger copy jobs be outsourced and appropriate bills be provided.
- v. Computerized Research – Lexis/Westlaw. Claims for Lexis or Westlaw, and other computerized legal research expenses should be in the exact amount charged the firm and appropriately allocated for these research services.

E. Verification

The forms detailing expenses shall be certified by a senior partner in each firm and/or the PSC member herself/himself attesting to the accuracy of the submissions. Attorneys shall keep receipts for all expenses. Credit card receipts are an appropriate form of verification so long as accompanied by a declaration from counsel that work was performed and paid for the common benefit.

F. Appointment of a Special Master

At a later and appropriate time, the Fee Committee may seek the appointment of a Special Master to review the time and expenses submissions under the direction of the Common

Benefit Fee Committee. The duties and obligations of the Special Master for this position will be set forth in a subsequent CMO.

VI. Court Approval

The PEC, and those counsel who subsequently desire to be considered for common benefit compensation, and/or who simply agree to be bound by this Order and as a condition thereof agree to the terms and conditions in this Order ("Participating Counsel") acknowledge and agree that the Court will have final, non-appealable authority regarding the award of common benefit fees, the allocation of those fees and awards for common benefit cost reimbursements in this matter. Participating Counsel have (or will have) agreed to and therefore will be bound by the Court's determination on a future common benefit percentage holdback, common benefit attorneys' fee awards, attorneys' fee allocations, and expense awards, and the Participating Counsel knowingly and expressly waive any right to appeal those decisions or the ability to assert the lack of enforceability of this Order or to otherwise challenge its adequacy.



Hon. John C. Porto, J.S.C.

EXHIBIT A TO CMO NO. 9
(Common Benefit Participation Agreement)

THIS AGREEMENT is made this ____ day of _____, 201__, by and between the MCL 630 Plaintiffs' Leadership Group appointed by the Superior Court of New Jersey, Atlantic County and _____ [Name of the Firm Executing the Agreement] (the "Participating Counsel").

1. Purpose: This Participation Agreement is a private cooperative agreement between plaintiffs' attorneys to share Common Benefit Work Product pursuant to Case Management Number ("CMO") No. 9, the Order Regarding Management of Timekeeping, Cost Reimbursement and Related Common Benefit Issues. Any plaintiffs' attorney who executes this Agreement or who is otherwise bound to this Participation Agreement by CMO No. 9 ("Participating Counsel") is entitled to receive the Common Benefit Work Product created by those attorneys who have also executed, or have been deemed to have executed, the Participation Agreement, regardless of the venue in which the attorneys' cases are pending.
2. Required Assessment Fee: Subject to the terms of CMO No. 9, all plaintiffs and their attorneys who agree to settle, compromise, dismiss, or reduce the amount of a claim, or with or without trial, recover a judgment for monetary damages or other monetary relief, including compensatory and punitive damages, for any Ethicon Proceed Hernia Mesh claims are subject to an assessment of the Gross Monetary Recovery that may be imposed by the Court. Such assessment shall be applicable to every case—filed or unfiled—in which the undersigned Participating Counsel and their law firm have any fee interest.
3. Court Approval: Any amount allocated, subject to a subsequent Order by the MCL Court, to compensate common benefit fees and/or to reimburse common benefit expenses that

have been incurred in *In re: Proceed Mesh Litigation*, MCL 630 shall be available for distribution to attorneys who have performed professional services or incurred expenses for the common benefit and who are Participating Counsel as defined in CMO No. 9. The MCL Court retains jurisdiction over any common benefit award. The undersigned Participating Counsel, on behalf of themselves, their affiliated counsel, and their clients, hereby consents to the jurisdiction of the MCL Court in connection with any common benefit award. Each Participating Counsel who does common benefit work pursuant to CMO No. 9 has the right to present their claim(s) for compensation and reimbursement prior to any decision by the Court. It is expected that due consideration of payment of common benefit fees and expenses will be given to the recommendation of Plaintiffs' Common Benefit Fee Committee created by the MCL Court. [u]

4. Binding Effect: The undersigned Participating Counsel agrees that all decisions by the Court, as they pertain to all matters related to Common Benefit, are final, binding and non-appealable.

Execute below:

I _____ [name of lawyer executing the Agreement] hereby represent to the Plaintiffs' Executive Committee that I have the authority to execute this Agreement on behalf of my law firm and have the authority to bind my law firm and cases in which the firm is entitled to attorneys' fees to the terms of this Agreement. [u]

I _____ [name of lawyer executing the Agreement] hereby certify that my law firm desires to be a Participating Counsel as defined in CMO No. 9, and is subject to CMO No. 9 and any subsequent Orders regarding an assessment for fees and costs as outlined in CMO No. 9 and herein.

Date:

#1093321

8468.002)

Task Code	Hours
PEC Calls/Meeting	
PSC Calls/Meeting	
Lead/Liaison Duties	
MDL Status Conference/ Hearing	
Court Appearance	
Discovery	
Document Review	
Investigation & Research	
Dep: Prep/Take/Defend	
Science	
Experts/Consultants	
Written Motions/Law & Briefing	
Privilege & Redaction	
Analysis & Strategy	
Trial Prep/Bellwether	
Trial	
Settlement	
Appeals	
Travel	
Administrative	
Other	
TOTAL	0.0