

## 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](http://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](mailto:taironda.phoenix@njcourts.gov).



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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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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”).<sup>1</sup> 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.

<sup>1</sup> 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 Physiomesh.

In May of 2016, Defendants issued a "Field Safety Notice" relating to the Physiomesh 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.

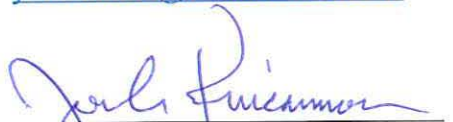
Additionally, Bergen County Superior Court has gained substantial, relevant knowledge in handling the current and prior pelvic mesh cases, including knowledge regarding these Defendants, the materials, manufacturing and sterilization processes used by mesh manufacturers, and the regulatory processes 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 cases<sup>2</sup> 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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<sup>2</sup> 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; Lotridge 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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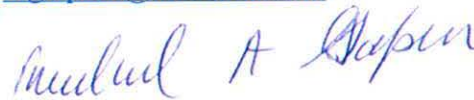
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JAMES BARRY, ESQ.



# 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 Mihm, 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