

## 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](http://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](mailto:Melissa.Czartoryski@njcourts.gov).



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Glenn A. Grant, J.A.D.

Acting Administrative Director of the Courts

Dated: May 1, 2019

## 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

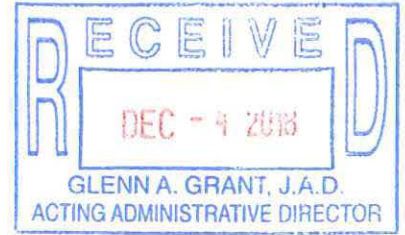
Dated: March 12, 2019



**LOCKS LAW FIRM, LLC**

801 North Kings Highway  
Cherry Hill, New Jersey 08034  
T 856.663.8200  
T 866.LOCKSLAW  
F 856.661.8400  
www.lockslaw.com

Gene Locks  
Mike B. Leh  
Karl Friedrichs  
Jennifer L. Emmons  
Alfred M. Anthony  
Jerry A. Lindheim



Steven P. Knowlton  
David D. Langfitt  
Andrew J. Dupont

James A. Barry  
Neel D. Bhuta  
Melanie J. Garner  
Sharice C. Wallace  
Timothy A. Burke

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 Plaintiffs<sup>1</sup> 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

<sup>1</sup> 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 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.<sup>2</sup>

### **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.<sup>3</sup> 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

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<sup>2</sup>New 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.

<sup>3</sup> 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.

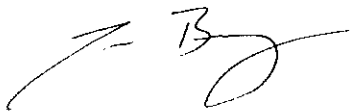
Plaintiffs propose the following New Jersey venues for consolidation as there are arguments favoring any of the three potential MCL counties:

- 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,

**LOCKS LAW FIRM, LLC**  
801 N. Kings Highway  
Cherry Hill, NJ 08034  
(856)553-8200  
(856)661-8400  
[jbarry@lockslaw.com](mailto:jbarry@lockslaw.com)



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JAMES BARRY, ESQ.

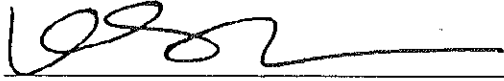
**THE HOLLIS LAW FIRM, P.A.**  
5100 W. 95<sup>th</sup> St., Suite 250  
Overland Park, KS 66207  
(913)385-5400  
(913)385-5402 (fax)  
[adam@hollislawfirm.com](mailto:adam@hollislawfirm.com)



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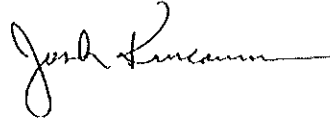
ADAM EVANS, ESQ.

FLEMING NOLEN & JEZ, LLP  
2800 Post Oak Blvd., Suite 4000  
Houston, TX 77056  
(713) 621-7944  
(713) 621-9638 (fax)  
[Kelsey\\_Stokes@fleming-law.com](mailto:Kelsey_Stokes@fleming-law.com)



KELSEY L. STOKES, ESQ.

LOMURRO, MUNSON, COMER,  
BROWN & SCHOTTLAND LLC  
4 ParagonWay, Suite 1 00  
Freehold, NJ 07728  
(732) 414-0300  
(732) 431-4043 (fax)  
[JKincannon@lomurrofirma.com](mailto:JKincannon@lomurrofirma.com)



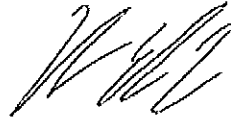
JOSHUA S. KINCANNON, ESQ.

POGUST BRASLOW & MILROOD, LLC  
Eight Tower Bridge, Suite 940  
161 Washington Street  
Conshohocken, PA 19428  
(610) 941-4204  
(610) 941-4245 (fax)  
[tmillroad@pbmattorneys.com](mailto:tmillroad@pbmattorneys.com)



TOBIAS L. MILLROOD, ESQ.

LEVIN, PAPA|ITONTO, THOMAS,  
MITCHELL, RAFFERTY & PROCTOR, P.A.  
316 S. Baylen Street, Suite 600  
Pensacola, FL 35202  
[rprice@levinlaw.com](mailto:rprice@levinlaw.com)



ROBERT E. PRICE, ESQ.

cc: David R. Kott, Esq. (via Lawyer's Service)  
Kelly S. Crawford, Esq. (via Lawyer's Service)  
William M. Gage, Esq. (via UPS)  
G. Brian Jackson, Esq. (via UPS)  
Richard T. Bernardo, Esq. (via Lawyer's Service)

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 Giuffra 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
Alguacil, Leila	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
Blackistone, 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, Russall	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 Davis, Kelly	MID-L-7719-18	Proceed Ventral Patch	Pogust, Braslow & Milrood & Sanders Phillips Grossman
Deffenbaugh, Gary	MID-L-6830-18	Proceed Ventral Patch	LMCBS/Hollis Law Firm
Delph, Terrie Delph, Matthew	MID-L-7021-18	Proceed Surgical Mesh	Pogust, Braslow & Milrood & Sanders Phillips Grossman
Dias, Alessandro	MID-L-6831-18	Prolene Hernia System	LMCBS/Hollis Law Firm
Dill, Barbara Dill, John Irvin	MID-L-7022-18	Proceed Surgical Mesh	Pogust, Braslow & Milrood & Sanders Phillips Grossman
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 Eccles, Lauren	MID-L-6370-18	Proceed Ventral Patch	LMCBS/Allan Berger & Associates
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 Favors, Carol	MID-L-6386-18	Proceed Ventral Patch	LMCBS/Allan Berger & Associates
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 Gonzalez, Silvia	MID-L-7280-18	Proceed Ventral Patch	Pogust, Braslow & Milrood & Sanders Phillips Grossman
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 Guy, Raymond	MID-L-7028-18	Prolene Hernia System	LMCBS/Allan Berger & Associates
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 Harding, Hargis	MID-L-7030-18	Proceed Surgical Mesh	Pogust, Braslow & Milrood & Sanders Phillips Grossman
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
Ishii, 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, Georgie	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

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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

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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

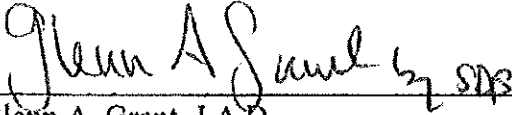
## NOTICE TO THE BAR

### 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).

  
\_\_\_\_\_  
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

Card

**LOMURRO, MUNSON, COMER, BROWN & SCHOTTLAND, LLC**

ATTORNEYS AT LAW  
MONMOUTH EXECUTIVE CENTER  
4 PARAGON WAY  
SUITE 100  
FREEHOLD, NEW JERSEY 07728  
(732) 414-0300  
FAX (732) 431-4043

Website:  
[WWW.LOMURROLAW.COM](http://WWW.LOMURROLAW.COM)

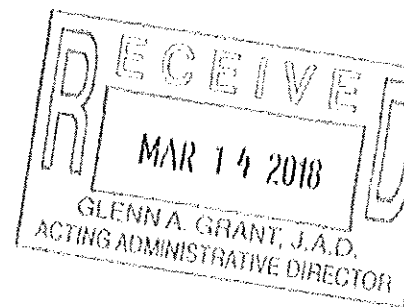
**Joshua S. Kincannon, Esq.**  
Direct Dial - (732) 414-0358  
NJ Attorney ID: 034052000

[jkincannon@lomurrofirm.com](mailto:jkincannon@lomurrofirm.com)  
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”).<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.

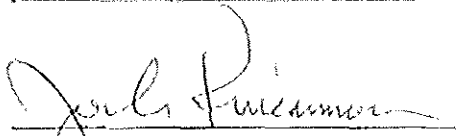
Additionally, Bergen County Superior Court has gained substantial, relevant knowledge in handling the current and prior pelvic mesh cases, including knowledge regarding these Defendants, the materials, manufacturing and sterilization processes used by mesh manufacturers, and the regulatory processes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

**LOMURRO, MUNSON, COMER,  
BROWN & SCHOTTLAND, LLC**  
4 Paragon Way, Suite 100  
Freehold, NJ 07728  
(732) 414-0300  
(732) 431-4043 (fax)  
[jkincannon@lomurrofir.com](mailto:jkincannon@lomurrofir.com)

  
\_\_\_\_\_  
JOSHUA S. KINCANNON, ESQ.

**THE HOLLIS LAW FIRM, P.A.**  
5100 W. 95<sup>th</sup> St., Suite 250  
Overland Park, KS 66207  
(913) 385-5400  
(913) 385-5402 (fax)  
[adam@hollislawfirm.com](mailto:adam@hollislawfirm.com)

  
\_\_\_\_\_  
ADAM EVANS, ESQ.

<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.

**FLEMING NOLEN & JEZ, LLP**  
2800 Post Oak Blvd., Suite 4000  
Houston, TX 77056  
(713) 621-7944  
(713) 621-9638 (fax)  
[kelsey\\_stokes@fleming-law.com](mailto:kelsey_stokes@fleming-law.com)



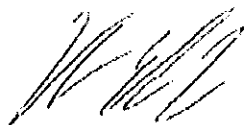
KELSEY L. STOKES, ESQ.

**KRAUSE & KINSMAN, LLC**  
4717 Grand Avenue, Suite 250  
Kansas City, MO 64112  
(816) 760-2700  
(816) 760-2800 (fax)  
[robert@krauseandkinsman.com](mailto:robert@krauseandkinsman.com)



ROBERT L. KINSMAN, ESQ.

**LEVIN, PAPANTONIO, THOMAS,  
MITCHELL, RAFFERTY & PROCTOR,  
P.A.**  
316 S. Baylen Street, Suite 600  
Pensacola, FL 35202  
[rprice@levinlaw.com](mailto:rprice@levinlaw.com)



ROBERT E. PRICE, ESQ.

JSK/slm  
Encl

Cc: 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)

**POGUST BRASLOW & MILROOD,  
LLC**  
Eight Tower Bridge, Suite 940  
161 Washington Street  
Conshohocken, PA 19428  
(610) 941-4204  
(610) 941-4245 (fax)  
[tmillrood@pbmattorneys.com](mailto:tmillrood@pbmattorneys.com)

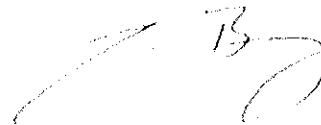


TOBIAS L. MILLROOD, ESQ.

**LOCKS LAW FIRM**  
801 North Kings Highway  
Cherry Hill, NJ 08034  
(856) 663-8200  
(856) 661-8400 (fax)  
[mgalpern@lockslaw.com](mailto: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, Alexsandro	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
Trebollo, 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

**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

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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

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

Sheet 4

6

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

7

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

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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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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

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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

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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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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

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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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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.

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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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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.

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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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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,

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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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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

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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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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

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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

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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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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

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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

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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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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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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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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)

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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DAWN BREVARD-WATERS  
Trial Court Administrator

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<http://www.njcourts.com/>

MIDDLESEX COUNTY COURTHOUSE  
56 Paterson Street – P.O. 964  
New Brunswick, NJ 08903-964  
Phone: (732) 645-4300 X. 88171  
Fax: (732)-645-4309

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IAN RATZLAFF  
Civil Division Manager

October 25, 2018

David R. Kott, Esq.  
McCARTER & ENGLISH, LLP  
Four Gateway Center  
100 Mulberry Street  
P.O. Box 652  
Newark, New Jersey 07101-0652

Kelly Crawford, Esq.  
RIKER, DANZIG, SCHERER, HYLAND & PERRETTI, LLP  
Headquarters Plaza  
One Speedwell Avenue  
Morristown, NJ 07962

G. Brian Jackson, Esq.  
BUTLER SNOW, LLP  
The Pinnacle at Symphony Place  
150 3<sup>rd</sup> Avenue South, Suite 1600  
Nashville, TN 37201

Fred E. Bourn, III, Esq.  
BUTLER SNOW, LLP  
Renaissance at Colony Park, Suite 1400  
1020 Highland Colony Parkway  
P.O. Box 6010  
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: Taironda 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.  
Melissa F. Hague, Esq.  
C.M. Cowper, Esq.

David R. Kott – N.J. Attorney ID #018131977  
**McCARTER & ENGLISH, LLP**  
Four Gateway Center  
100 Mulberry Street  
P.O. Box 652  
Newark, New Jersey 07101-0652  
(973) 622-4444

Kelly Crawford – N.J. Attorney ID #029141993  
**RIKER, DANZIG, SCHERER, HYLAND & PERRETTI, LLP**  
Headquarters Plaza  
One Speedwell Avenue  
Morristown, NJ 07962  
(973) 538-0800

G. Brian Jackson, Esq.  
**BUTLER SNOW, LLP**  
The Pinnacle at Symphony Place  
150 3<sup>rd</sup> Avenue South, Suite 1600  
Nashville, TN 37201  
(615) 651-6716

Fred E. Bourn, III, Esq.  
**BUTLER SNOW, LLP**  
Renaissance at Colony Park, Suite 1400  
1020 Highland Colony Parkway  
P.O. Box 6010  
Ridgeland, MS 39151-6010  
(601) 948-5711

*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 <sup>9<sup>th</sup></sup> 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	Case 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
Anawaty, 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
Blackistone, Janice	BER-L-4332-18
Bolyard, Glenn	BER-L-5689-18
Booth, Gloria Jean & Russall	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 & Francelia	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
Chulee, Sherry Marie	BER-L-3703-18
Collier, Greg	BER-L-2214-18
Cordova, Michael	BER-L-4532-18
Cottle, 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.

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
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, Georgie	BER-L-3913-18
Krampen-Yerry, Denise	BER-L-1466-18
Lang, Christine M.	BER-L-1067-18
Lecza, 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.
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
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
Mountjoy, 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

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 BER-L-007065-17 10/02/2018 10:57:24 AM Pg 6 of 8 Trans ID: LCV20181714948

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
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, 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

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 BER-L-007065-17 10/02/2018 10:57:24 AM Pg 7 of 8 Trans ID: LCV20181714948

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
Nomikos, Michael	BER-L-6211-18
Nuri, Lindita 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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**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. *[Signature]*

**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 B. Higbee  
 Hon. Brian R. Martinotti  
 Hon. Jessica R. Mayer  
 Hon. Vincent LeBlon  
 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 dispersement 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.

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### **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.