

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

SHELLY K. COPPEDGE

VS.

ETHICON, INC.

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CIVIL ACTION NO. _____

JURY TRIAL REQUESTED

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE COURT:

I.

This is a negligence, strict liability, and breach of warranty action arising out of the serious personal injuries of Shelly K. Coppedge as a result of the negligence, strict liability, and breach of warranty of Ethicon, Inc. concerning its Proceed oval mesh

**II.
Parties**

Parties to this suit are:

Plaintiff: Shelly K. Coppedge, a natural person who resides in White Oak, Gregg County, Texas.

Defendant: Ethicon, Inc., is a foreign corporation licensed to do business in the State of Texas who may be served by serving its Registered Agent for Service, C. T. Corporation System, 350 N. St. Paul Street., Ste. 2900, Dallas, Texas 75201-4234.

**III.
Venue and Jurisdiction**

Plaintiff Shelly K. Coppedge is a resident of the Eastern District of Texas. Defendant Ethicon, Inc. is a foreign corporation with its principal place of business in some state other than the

State of Texas, thereby creating a diversity of citizenship between Plaintiff and Defendant. The amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.00. This Court has jurisdiction of this action under 28 U.S.C. § 1332. Venue of this suit is proper herein under 28 U.S.C. § 1391 as this cause of action accrued within the Eastern District of Texas.

**IV.
Facts**

On or about August 24, 2009, Plaintiff Shelly K. Coppedge was treated at East Texas Medical Center in Tyler, Texas for an incisional hernia. The surgeon herein used Proceed Oval Mesh, manufactured, designed, and marketed by Ethicon, Inc., with Lot No. BHG341, and Catalog No. PCDG1. The Proceed Mesh is an implantable mesh marketed, distributed, manufactured, designed, and tested by Defendant Ethicon, Inc. Plaintiff Shelly K. Coppedge's condition was not remedied by this procedure in August of 2009. In fact, her condition became subsequently worse, and then in June of 2011 and July of 2011 Plaintiff Shelly K. Coppedge required subsequent surgeries to try to remedy the complications cause by the mesh, including a disintegration of the mesh and infection of the mesh. Even after the two subsequent surgeries, Plaintiff Shelly K. Coppedge continues to suffer various infirmaries due to complications caused by the Proceed mesh that was designed, marketed, and tested by Defendant Ethicon, Inc.

Since August of 2009, Plaintiff Shelly K. Coppedge has continued to suffer with pain, mental anguish, and other problems associated with the defective Proceed Mesh in question.

**V.
Strict Liability**

Plaintiff believes and reasonably alleges that the surgical mesh in question was designed, manufactured, marketed, packaged, labeled and sold by Defendant Ethicon, Inc. At all times

relevant herein, Defendant Ethicon, Inc. was engaged in the business of designing, manufacturing, marketing, packaging, labeling, and selling mesh products, such as the Proceed Mesh implanted into Plaintiff Shelly K. Coppedge.

Plaintiff Shelly K. Coppedge was implanted with the Proceed Mesh during surgery performed at East Texas Medical Center in Tyler, Texas, in August of 2009.

The product was implanted to treat an incisional hernia, the use for which the product was designed, marketed, and sold.

VI.

The Proceed Mesh was defective and unreasonably dangerous, and not suitable for implantation in Shelly K. Coppedge, and others similarly situated. The product was not properly tested and was marketed as being reasonably safe for its intended use as an implantable mesh for incisional hernias, among other ailments.

This defective product was a producing cause of Plaintiff Shelly K. Coppedge's injuries and damages.

VII. Negligence

Defendant Ethicon, Inc. was negligent in its design, marketing, testing, and distribution of the Proceed Mesh in question, as far as Shelly K. Coppedge and others similarly situated are concerned. The product was not properly designed for its intended purpose. The product (Proceed Mesh) was not properly tested to determine whether or not it was safe, or at least safer than other alternative products that might be used to treat incisional hernias with a product such as the Proceed mesh or products of its competitors.

At the time of the implantation in Shelly K. Coppedge (August 2009), Defendant Ethicon, Inc. knew or should have known by reasonable testing and complaints received by them prior to August of 2009 that there was a problem with the Proceed Mesh designed, marketed, manufactured, and allegedly tested by Defendant, Ethicon, Inc. Such negligence was a proximate cause of Plaintiff Shelly K. Coppedge's injuries and damages.

**VIII.
Breach of Warranty**

Defendant made implied and express warranties to Shelly K. Coppedge, and others similarly situated in the stream of commerce, that the product (Proceed Mesh) was safe, had been tested, and was a better alternative for its intended use as an implantable mesh to treat an incisional hernia than other products. This was not true at the time of the implantation in August of 2009 for which Plaintiff was not warned or instructed, nor were any of the medical professionals in the stream of commerce notified of the problems to which Ethicon, Inc. was fully aware of by August of 2009.

Defendant's impliedly warranted that the products were merchantable and were fit for the ordinary purposes for which they were intended.

Plaintiff, individually, relied upon Defendant's implied warranty of merchantability in consenting to have the product implanted in him.

Defendant breached these implied and express warranties of merchantability because the products implanted in Plaintiff was neither merchantable nor suited for its intended use as warranted.

Plaintiff also asks for attorney fees in regards to the breach of warranty claims and allegations. The breach of warranty was also a producing cause of Plaintiff's injuries and damages.

**IX.
Damages**

Plaintiff Shelly K. Coppedge claims the following damages:

1. Medical expenses, past and future;
2. Loss of wages and loss of wage earning capacity, past and future;
3. Physical impairment, past and future;
4. Pain and mental anguish, past and future; and
5. Loss of enjoyment of life, past and future.

**X.
Punitive Damages**

Plaintiff makes claim pursuant to the Civil Practice and Remedies Code, § 41, *et seq*, that Defendant is liable to Plaintiff Shelly K. Coppedge for punitive damages for their gross negligence in the manufacture, design, marketing and testing, or lack thereof, for their Proceed mesh as implanted in Plaintiff Shelly K. Coppedge on August 24, 2009.

PREMISES CONSIDERED, Plaintiff specifically prays that there be judgment in favor of Plaintiff and against Defendant Ethicon, Inc., for all damages reasonable under the premises, including but not limited to compensatory damages, punitive damages, prejudgment and post judgment interest, costs of court, attorney fees, and any other general or equitable relief to which Plaintiff may show himself justly entitled.

Respectfully submitted,

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