

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

BRANDON HEFFERAN and SABINE HEFFERAN :

No.:

Plaintiffs, :

v. :

**COMPLAINT AND
JURY DEMAND**

ETHICON ENDO-SURGERY, INC. and
JOHNSON & JOHNSON. :

Defendants. :

COMPLAINT

Plaintiff, Brandon Hefferan (“Plaintiff”) and Sabine Hefferan, by and through their undersigned counsel, Morelli Alters Ratner LLP, by way of their complaint against Defendants, Ethicon Endo-Surgery, Inc. (hereinafter “Ethicon”) and Johnson & Johnson (hereinafter collectively “Defendants”), allege as follows upon information and belief:

INTRODUCTION

1. This case involves complications arising from a hemmroidectomy that were caused by a defective stapler that was used in the procedure, which was manufactured, designed, sold, distributed and promoted by Defendants.

2. On or about July 2, 2012, Planitff Brandon Hefferan underwent a hemorrhoidectomy for grade 3 hemorrhoids. The surgery was performed at Eifelklink St. Brigids, Kammerbruchstr 8, Simmerath 52152, Germany, and necessitated the use of an Ethicon surgical stapler.

3. During the course of the surgery, the Ethicon stapler malfunctioned and failed to properly fire, resulting in an incomplete firing stroke and incomplete staple formation,

which in turn caused an anastomotic leak from an opening in the rectal wall that led to, among other things, Fournier's gangrene, rhabdomyolysis, perianal necrosis and severe sepsis. Plaintiff underwent no fewer than twenty additional surgical procedures for treatment. He has sustained severe and permanent injuries and damages as a result.

4. On or about August 3, 2012, one month after the Plaintiff's initial surgery the Ethicon surgical stapler used in Plaintiff's surgery was recalled by Defendant Ethicon. The stapler was recalled because "users had difficulty firing the stapler devices, resulting in incomplete firing stroke and incomplete staple formation. Failure to complete the firing stroke of the stapler can result in severe pain, sphincter dysfunction, rectal wall damage, sepsis, bleeding, and occlusion of the rectal canal. Failure to complete firing stroke can also result in poor staple formation, dehiscence of the rectal wall staple line and bleeding." See FDA Recall notice dated August 3, 2012.

<http://www.fda.gov/MedicalDevices/Safety/ListofRecalls/ucm325570.htm>.

PARTIES

5. Plaintiff Brandon Hefferan is a citizen of the United States of America with his domicile in the State of Michigan. At all times relevant herein he was a resident of Monschau, Germany.

6. Plaintiff Sabine Hefferan is a citizen of Germany and at all times relevant herein was a resident of Monschau, Germany.

7. Defendant, Ethicon Endo-Surgery, Inc., is a foreign corporation incorporated in the State of Ohio and has its principal office at 4545 Creek Road M/L 8, Cincinnati, Ohio 45242 but is authorized to do business and does business in the State of

New Jersey.

8. Defendant Johnson & Johnson is a domestic corporation incorporated in the State of New Jersey and has its principal office at One Johnson and Johnson Plaza, New Brunswick, New Jersey 08933.

JURISDICTION AND VENUE

9. Original jurisdiction of this Court over the subject matter of this action is predicated on 28 U.S.C. Section §1332. The Plaintiffs and Defendants in this action are citizens of different states and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

10. Venue in this Court is proper pursuant to 28 U.S.C. §1391 in that Defendant Johnson & Johnson resides in the State of New Jersey.

GENERAL ALLEGATIONS

11. Defendant, Ethicon is now, and was at all times at issue herein, a merchant engaged in the business of designing, manufacturing, assembling, testing, inspecting, providing with warnings and instructions, marketing, and distributing medical devices, including the Ethicon surgical stapler at issue in this case.

12. Defendant, Johnson & Johnson is now, and was at all times at issue herein, the parent corporation of Defendant Ethicon, and is now and was at all times at issue herein a merchant engaged in the business of designing, manufacturing, assembling, testing, inspecting, providing with warnings and instructions, marketing, and distributing medical devices, including the Ethicon surgical stapler at issue in this case.

13. Defendants knew or should have known prior to distribution and sale of the Ethicon surgical stapler at issue in this lawsuit that the product was improperly and

dangerously designed, manufactured and unreasonably dangerous for use and that the staplers could and did misfire, resulting in an incomplete firing stroke and incomplete staple formation.

FIRST CAUSE OF ACTION
Negligence

14. Plaintiffs incorporate by reference herein each of the allegations heretofore set forth in this Complaint as though fully set forth herein.

15. At all times herein mentioned, Defendants had a duty to properly manufacture, design, test, produce, process, assemble, inspect, research, distribute, market, label, package, prepare for use, sell, and adequately warn of the risks and dangers of the Ethicon surgical stapler at issue in this action.

16. At all times herein mentioned, Defendants were negligent in the design, manufacture, research, assembly, testing, inspection, packaging, providing with warnings and instructions, marketing, and distribution of the Ethicon surgical stapler, which rendered the stapler defective and unreasonably dangerous.

17. The stapler was defective and unreasonably dangerous, in that it, among other things, malfunctioned and failed to properly fire, resulting in an incomplete firing stroke and incomplete staple formation.

18. Despite the fact that Defendants knew or should have known that the surgical stapler at issue herein could and would malfunction and fail to properly fire, resulting in an incomplete firing stroke and incomplete staple formation, Defendants continued to sell their products for use on patients like Plaintiff.

19. Defendants knew or should have known that patients like Plaintiff would foreseeably suffer injury as a result of Defendants' failure to exercise

ordinary care as described above.

20. Defendants' negligence was a proximate cause of the Plaintiff's injuries, harm and economic loss which Plaintiff suffered, and will continue to suffer, as described and prayed for herein.

SECOND CAUSE OF ACTION
Product Liability Act – Defective Design
(N.J.S.A. 2A:58C-1, et. seq.)

21. Plaintiffs incorporate by reference herein each of the allegations heretofore set forth in this Complaint as though fully set forth herein.

22. Defendants defectively and improperly designed, assembled, tested, inspected, provided with warnings and instructions, marketed, sold and distributed the Ethicon surgical stapler, such that when the stapler was placed into the stream of commerce, it was in an unreasonably dangerous and inherently defective condition, thereby rendering Defendants strictly liable for Plaintiffs resulting injuries and damages.

23. Defendants' Ethicon surgical was inherently dangerous and defective, unfit and unsafe for its intended and reasonably foreseeable uses, and do meet or perform to the expectations of its end users, including Plaintiffs.

24. Defendants' Ethicon surgical stapler created risks to the health and safety of patients like the Plaintiff, that are far more significant and devastating than the risk posed by other surgical staplers.

25. The design of the Defendants' Ethicon surgical stapler is defective in that it, among other things, malfunctioned and failed to properly fire, resulting in an incomplete firing stroke and incomplete staple formation.

26. The defects in the Ethicon surgical stapler at issue herein existed when it left the hands of Defendants.

27. The Ethicon surgical stapler was used by the Plaintiff's physicians in the manner intended.

28. The Ethicon surgical stapler used on Plaintiff during his surgery of July 2, 2012 malfunctioned and failed to properly fire, resulting in an incomplete firing stroke and incomplete staple formation.

29. The defective nature of the Ethicon surgical stapler caused severe and permanent injuries to the Plaintiff.

30. As a direct and proximate result of Plaintiff's doctors reasonably anticipated use of the Ethicon surgical stapler on Plaintiff as manufactured, designed, sold, supplied, marketed and/or introduced into the stream of commerce by Defendants, Plaintiffs suffered serious injury, harm, damages, economic and non-economic loss and will continue to suffer such harm, damages and losses in the future.

31. Defendants are liable in tort to the Plaintiffs for their wrongful conduct pursuant to the New Jersey Products Liability Act, N.J.S.A. 2A:58C-1, *et. seq.*

THIRD CAUSE OF ACTION
Product Liability Act – Manufacturing Defect
(N.J.S.A. 2A:58C-1, et. seq.)

32. Plaintiffs incorporate by reference herein each of the allegations heretofore set forth in this Complaint as though fully set forth herein.

33. Defendants' Ethicon surgical stapler was not reasonably fit, suitable, or safe for its intended purpose.

34. Defendants' Ethicon surgical stapler deviated from design specifications

causing it to malfunction and fail to properly fire, resulting in an incomplete firing stroke and incomplete staple formation.

35. As a proximate result of Defendants' improper manufacturing of its Ethicon surgical stapler, Plaintiffs have sustained serious injuries and damages.

36. Defendants are liable in tort to Plaintiffs for their wrongful conduct pursuant to the New Jersey Products Liability Act, N.J.S.A. 2A:58C-1, *et. seq.*

FOURTH CAUSE OF ACTION
Breach of Warranty

37. Plaintiffs incorporate by reference herein each of the allegations heretofore set forth in this Complaint as though fully set forth herein.

38. At all times relevant to this action, Defendants, are and were merchants in the business of designing, manufacturing, assembling, testing, inspecting, providing with warnings and instructions, marketing, and distributing the Ethicon surgical stapler at issue herein.

39. Defendants expressly and impliedly warranted that the Ethicon surgical stapler was of merchantable quality and further warranted the safety of the Ethicon surgical stapler for its usual and intended purpose.

40. By designing, manufacturing, assembling, testing, inspecting, providing with warnings and instructions, marketing, distributing, and/or otherwise placing the Ethicon surgical stapler into the stream of commerce in a condition in which it was defective and unreasonably dangerous, the surgical stapler was unmerchantable and unfit for its ordinary and intended purposes.

41. Defendants' breach of these warranties was a proximate cause of the Plaintiffs' injuries, harm and economic loss which Plaintiffs suffered, and will continue to

suffer, as described and prayed for herein.

FIFTH CAUSE OF ACTION
(Loss of Consortium)

42. Plaintiffs incorporate by reference the above paragraphs as if fully set forth at length herein.

43. Before suffering the injuries as described more fully above, Plaintiff, Brandon Hefferan, was able to and did perform all the duties of a husband and did perform these duties, including but not limited to assisting in maintaining the home, providing love, companionship, affection, society, sexual relations, moral support, and solace to Plaintiff's Spouse. Plaintiff Brandon Hefferan is no longer able to perform his normal and routine duties as a husband as a result of the injuries he sustained from the Ethicon surgical stapler.

44. Plaintiff's Spouse, Sabine Hefferan, suffered from loss of society and consortium due to the injuries to her husband.

PUNITIVE DAMAGES ALLEGATIONS

45. Plaintiffs incorporate by reference here each of the allegations set forth in this Complaint as though fully set forth herein.

46. Defendants knew or should have known of the danger of distributing surgical staplers such as the Ethicon surgical stapler at issue herein that could malfunction and misfire resulting in an incomplete firing stroke and incomplete staple formation. Despite this knowledge, the Defendants made the affirmative decision to place the surgical staplers into the stream of commerce, thereby recklessly, willfully, wantonly, and intentionally exposing the public to hazards in conscious disregard to the consequences.

47. Defendants knew or should have known of the dangers and complications associated with the use of their defective surgical staplers, including that they could misfire causing incomplete firing stroke and incomplete staple formation and intentionally, recklessly, willfully, wantonly, left the surgical staplers like the Ethicon surgical stapler at issue herein on the market and in use without recalling them for longer than necessary creating additional risks to patients like Plaintiff.

48. These willful and knowing acts were done for the primary purpose of increasing Defendants' profits from the sale of surgical staplers. Defendants' outrageous and unconscionable conduct warrants an award of exemplary and punitive damages against the Defendants in an amount appropriate to punish and make an example of Defendants, and deter future conduct.

DEMAND FOR JURY TRIAL

49. Plaintiff demands a trial by jury on all counts and as to all issues.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs demand judgment, jointly and severally, of the Defendant Ethicon and Defendant, Johnson & Johnson, for compensatory damages; punitive damages; attorney's fees; costs and disbursements of this action; prejudgment and post-judgment interest; and for such other relief as the court may deem appropriate.

Dated: February 13, 2014

Respectfully submitted,



David T. Sirotkin (DS4863)
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Telephone: 212.751.9800
Attorneys for Plaintiff

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

BRANDON HEFFERAN and SABINE HEFFERAN

(b) County of Residence of First Listed Plaintiff GERMANY
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, Email and Telephone Number)

MORELLI ALTERS RATNER LLP
950 Third Avenue, 11 Floor, NY, NY 10022

DEFENDANTS

ETHICON ENDO-SURGERY, INC. and JOHNSON & JOHNSON

County of Residence of First Listed Defendant SOMERSET
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input checked="" type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input checked="" type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 O.S.C. § 1332

Brief description of cause:
Product liability/ negligence/ breach of warranty claim-Plaintiff injured from defective surgical stapler

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

2/25/14

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____