UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

Case Type: Products Liability

Court File No. _____

CARL SMITH
Plaintiff,

v.

COMPLAINT
(Jury Trial Demanded)

ATRIUM MEDICAL CORPORATION,

Defendant.

Plaintiff, Carl Smith, for his Complaint against Defendant Atrium Medical Corporation, states as follows:

PARTIES

1. The Plaintiff, Carl Smith ("Plaintiff"), is a resident of Ponchatoula, Louisiana, and a citizen of the United States.

2. The Defendant, Atrium Medical Corporation ("AMC") is a Delaware corporation with its corporate headquarters and principal place of business located in Hudson, New Hampshire.

3. At all times mentioned herein, Defendant, acted by and through its agents, representatives, and employees who acted within the scope and course of their agency and employment.

VENUE AND JURISDICTION

1. Venue is proper in this Court in that SMITH is domiciled in Ponchatula, Louisiana, as it is the Plaintiff's usual place of abode. Venue is proper in New Hampshire because at all relevant times, Defendant AMC designed, developed, manufactured, licensed, marketed, distributed, sold and/or placed in the stream of commerce the C-QUR Mesh products at issue in this lawsuit.

2. The Court has jurisdiction pursuant to 28 U.S.C. §1332(d) and the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §§ 1711, et seq., which vests original jurisdiction in the district courts of the United States for any multi-state class action where the aggregate amount in controversy exceeds five million dollars and where the citizenship of any member of the class of is different from that of any Defendant. The five million dollar amount-in-controversy and diverse-citizenship requirements of CAFA are satisfied in this case.

3. Venue is proper in this District pursuant to 15 U.S.C. §§ 15(a) and 22 and 28 U.S.C § 1391(b), (c) and (d) because during the Class Period, all the Defendants resided, transacted business, were found, or had agents in this

District; a substantial part of the events or omissions giving rise to these claims occurred in this District; and a substantial portion of the affected interstate trade and commerce discussed herein has been carried out in this District.

4. This Court has personal jurisdiction over each Defendant, because each Defendant: transacted business throughout the United States, including in this District; and dealt with Class members throughout the United States, including Class members residing or located in this District; had substantial contacts with the United States, including in this District; and/or committed overt acts in furtherance of their illegal scheme and conspiracy in the United States. In addition, the conspiracy was directed at, and had the intended effect of, causing injury to persons residing in, located in, or doing business throughout the United States, including in this District.

INTERSTATE COMMERCE

5. The activities of Defendants and their Co-Conspirators were within the flow of, were intended to, and did have a substantial effect on the foreign and interstate commerce of the United States.

6. Defendants' unlawful acts have had a substantial effect on interstate commerce within Louisiana.

FACTUAL ALLEGATIONS

7. Defendant AMC developed the C-QUR Mesh for use in hernia repair, chest wall reconstruction, traumatic or surgical wounds, and other fascial surgical intervention procedures requiring reinforcement with a non-absorbable supportive material. The Atrium Medical Corporation's website states "C-QUR Mesh combines Atrium's polypropylene mesh with an all natural Omega 3 gel coating. The 03FA coating is derived from highly purified pharmaceutical grade fish oil consisting of a unique blend of triglycerides and Omega 3 fatty acids."

8. On May 14, 2012, Plaintiff Carl Smith, a 63 year-old male diagnosed with incarcerated umbilical hernia on CT, underwent umbilical hernia repair with Atrium C-QUR mesh.

9. On February 28, 2013, Plaintiff presented with some abdominal pain and shortness of breath for three (3) weeks with findings of pneumatosis intestinalis in the jejunum and portal venous air on CT. He was admitted to the ICU with diagnosis of possible ischemic bowel. He underwent exploratory laparotomy with small bowel resection due to small bowel ischemia and gangrene – Intraoperatively at the site of a previous umbilical hernia repair, a thickened fascial tissue was encountered and old mesh was encountered as well.

There was noted to be intense adherence of omentum and small bowel to the undersurface of the umbilical area at the site of previously placed mesh. There appeared to be an adherence of the mesh to a portion of the small bowel. This had resulted in a twist of the small bowel around this area and this bowel was taken down from the mesh with a small segment of mesh intact on the bowel. The old mesh at the level of the previous hernia repair was excised from the fascia.

10. On February 28, 2013 – March 9, 2013, Plaintiff was hospitalized and his hospital course was complicated by acute respiratory failure and was discharged home.

11. March 26, 2013, Plaintiff was admitted for complaints of coffee ground emesis and diarrhea.

12. On March 31, 2013, Plaintiff was discharged with a diagnosis of numerous gastric ulcers noted on EGD without H. pylori and stool studies for diarrhea positive for Crypto Ag.

13. Prior to and in 2006, Defendant sought and obtained Food and Drug Administration ("FDA") approval to market the Atrium C-QUR Mesh Products under Section 510(k) of the Medical Device Amendment.

14. Defendant's C-QUR Mesh Products have been and continue to be marketed to the medical community and to patients as safe, effective, reliable,

medical devices; implanted by safe and effective, minimally invasive surgical techniques for the treatment of medical conditions, primarily hernia repair, chest wall reconstruction and repair to traumatic injuries, and as safer and more effective as compared to the traditional products and procedures for treatment, and other competing mesh products.

15. The Defendant has marketed and sold the C-QUR Mesh Products to the medical community at large and patients through carefully planned, multifaceted marketing campaigns and strategies. These campaigns and strategies include, but are not limited to, aggressive marketing to health care providers at medical conferences, hospitals, private offices, and include the provision of valuable cash and non-cash benefits to health care providers. Also utilized are documents, patient brochures, and websites, offering exaggerated and misleading expectations as to the safety and utility of the products.

16. At all times relevant to this action, Defendant, intentionally, recklessly, and/or negligently concealed, suppressed, omitted, and misrepresented the risks, dangers, defects, and disadvantages of the C-QUR Mesh Products and advertised, promoted, marketed, sold, and distributed the C-QUR Mesh Products as a safe medical device when, in fact, Defendant, knew that the C-QUR Mesh Products were not safe for their intended purposes and that the mesh products would cause, and did cause, serious medical problems,

and in some patients, catastrophic and permanent injuries.

17. Contrary to the Defendant's representations and marketing to the medical community and to the patients themselves, the Defendant's C-QUR Mesh Products have high failure, injury, and complication rates, fail to perform as intended, require frequent and often debilitating re-operations, and have caused severe and irreversible injuries, conditions, and damage to a significant number of people, including the Plaintiff, making them defective under the law. The defects stem from any or all of the following:

a. the use of triglyceride material in the Mesh itself and the immune reaction that results, causing adverse reactions and injuries;

b. the design of the C-QUR Mesh to be inserted into an area of the body with high levels of bacteria that adhere to the mesh causing immune reactions and subsequent tissue breakdown and adverse reactions and injuries;

c. biomechanical issues with the design of the mesh that create strong amounts of friction between the mesh and the underlying tissue that subsequently cause that tissue to degrade resulting in injury

d. degradation of the mesh itself over time which causes the internal tissue to degrade resulting in injury.

e. the welding of the mesh itself during production which creates a toxic substance that contributes to the degradation of the mesh and host tissue

alike.

18. Upon information and belief, the Defendant consistently underreported and withheld information about the propensity of Defendant's C-QUR Mesh Products to fail and cause injury and complications, and have misrepresented the efficacy and safety of the Products, through various means and media, actively and intentionally misleading the FDA, the medical community, patients, and the public at large.

19. Despite the chronic underreporting of adverse events associated with the Defendant's C-QUR Mesh Products and the underreporting of events associated with similarly designed competitor products, enough complaints were recorded for the FDA to issue a public health notification regarding the dangers of these devices.

20. The Food and Drug Administration ("FDA") issued a Public Health Notification that described over 1,000 complaints (otherwise known as "adverse events") that had been reported over a three-year period relating to mesh products. Although the FDA notice did not identify the C-QUR Mesh Products manufacturers by name, a review of the FDA's MAUDE database indicates that the Defendant is one of the manufacturers of the products that are the subject of the notification.

21. The FDA held advisory committee meetings to address the issues and

concerns surrounding the C-QUR Mesh Products, including the product at issue in this lawsuit.

22. Defendant has known that the C-QUR Mesh Products had high failure and complication rates, resulting in the recall of some of these Mesh Products, and that the C-QUR Mesh Products were and are causing numerous patients severe injuries and complications. The Defendant suppressed this information, and failed to accurately and completely disseminate or share this and other critical information with the FDA, health care providers, or the patients. As a result, the Defendant actively and intentionally misled and continue to mislead the public, including the medical community, health care providers and patients, into believing that the C-QUR Mesh Products and the procedures for implantation were and are safe and effective, leading to the prescription for and implantation of the C-QUR Mesh Products into the Plaintiff.

23. Defendant failed to perform or rely on proper and adequate testing and research in order to determine and evaluate the risks and benefits of its C-QUR Mesh Products.

24. Feasible and suitable alternative designs as well as suitable alternative procedures and instruments for implantation have existed at all times relevant as compared to the Defendant's C-QUR Mesh Products.

25. The C-QUR Mesh Products were at all times utilized and implanted in a manner foreseeable to the Defendant, as Defendant generated the instructions for use, created the procedures for implanting the mesh, and trained the implanting physicians.

26. The Defendant provided incomplete, insufficient, and misleading training and information to physicians, in order to increase the number of physicians utilizing the C-QUR Mesh Products, and thus increase the sales of the Products, and also leading to the dissemination of inadequate and misleading information to patients, including Plaintiff.

27. The C-QUR Mesh that was implanted into the Plaintiff was in the same or substantially similar condition as they were when they left the possession of Defendant, and in the condition directed by and expected by the Defendant.

28. Plaintiff and his physicians foreseeably used and implanted the C-QUR Mesh Products, and did not misuse, or alter the Products in an unforeseeable manner.

29. Defendant misrepresented to the medical and healthcare community, Plaintiff, the FDA, and the public that the Products had been tested and were found to be safe and effective for the purposes of treating hernia repairs.

30. Defendant made these representations with the intent of inducing the

medical community, Plaintiff, and the public, to recommend, prescribe, dispense, and purchase the Products for use as a means of treatment for hernia repairs which evinced an indifference to the health, safety, and welfare of Plaintiff.

31. Defendant failed to undertake its duties to properly know the qualities of itsr products and in representations to Plaintiff and/or to Plaintiff's healthcare providers, to and concealed and intentionally omitted the following material information:

a. That the Products were not as safe as other products and procedures available to treat incontinence and/or prolapse;

b. That the risk of adverse events with the Products was higher than with other products and procedures available to treat incontinence and/or prolapse;

c. That the risk of adverse events with the Products were not adequately tested and were known by Defendant;

d. That the limited clinical testing revealed the Products had a higher risk of adverse effects, in addition to, and above and beyond those associated with other products and procedures available to treat incontinence and/or prolapse;

e. That Defendant failed to follow up on the adverse results from clinical studies and buried and/or misrepresented those findings;

f. That Defendant was aware of dangers of the C-QUR Mesh Products in addition to and above and beyond those associated with other products and procedures available;

g. That the C-QUR Mesh Products were dangerous and caused adverse side effects, including but not limited to higher incidence of erosion and failure, at a much more significant rate than other products and procedures available to treat incontinence and/or prolapse;

h. That patients needed to be monitored more regularly than usual while using the Products and that in the event the products needed to be removed that the procedures to remove them had a very high failure rate and/or needed to be performed repeatedly; Thus:

i. the Products were manufactured negligently;

j. the Products were manufactured defectively;

k. the Products were designed negligently, and designed defectively.

32. Defendant was under a duty to disclose to Plaintiff and her physicians, the defective nature of the Products, including, but not limited to, the heightened risks of erosion, failure and permanent injury.

33. Defendant had sole access to material facts concerning the defective nature of the products and their propensity to cause serious and dangerous side effects and hence, cause dangerous injuries and damage to persons who used the C-QUR Mesh Products.

34. Defendant's concealment and omissions of material fact concerning the safety of the C-QUR Mesh Products were made to cause Plaintiff's physicians and healthcare providers to purchase, prescribe, and/or dispense the Products; and/or to mislead Plaintiff into reliance and cause Plaintiff to use the Products.

35. At the time these representations were made by Defendant, and at the time Plaintiff used the Products, Plaintiff was unaware of the falsehood of these representations, and reasonably believed them to be true.

36. Defendant knew and had reason to know that the Products could and would cause severe and grievous personal injury to the users of the Products, and that they were inherently dangerous in a manner that exceeded any purported, inaccurate, or otherwise downplayed warnings.

37. In reliance upon these false representations, Plaintiff was induced to, and did use the C-QUR Mesh Products, thereby sustaining severe and permanent personal injuries and damages. Defendant knew or had reason to know that Plaintiff and his physicians and other healthcare providers had no

way to determine the truth behind Defendant's concealment and omissions, and that these included material omissions of facts surrounding the use of the Products, as described in detail herein.

38. As a result of Defendant's research and testing or lack thereof, Defendant distributed false information, including but not limited to assuring Plaintiff, the public, and Plaintiff's healthcare providers and physicians, that the Products were safe for use as a means of treatment for hernia repair, chest wall reconstruction and repair of traumatic injuries, and were as safe or safer than other products and/or procedures available and on the market. As a result of Defendant's research and testing, or lack thereof, Defendant intentionally omitted, concealed and suppressed certain results of testing and research to healthcare professionals, Plaintiff, and the public at large.

39. Defendant had a duty when disseminating information to the public to disseminate truthful information; and a parallel duty not to deceive the public, Plaintiff, Plaintiff's healthcare providers, and the FDA.

40. The information distributed to the public, the medical community, the FDA, and Plaintiff by Defendant included, but was not limited to, reports, press releases, advertising campaigns, television commercials, print advertisements, billboards and other commercial media containing material representations,

which were false and misleading, and contained omissions and concealment of the truth about the dangers of the use of the Products.

41. Defendant intentionally made material misrepresentations to the medical community and public, including Plaintiff, regarding the safety of the Products specifically that the Products did not have dangerous and/or serious adverse health safety concerns, and that the Products were as safe as other means of treating hernia repairs, chest wall reconstruction and traumatic injuries.

42. Defendant intentionally failed to inform the public, including Plaintiff, of the high failure rate including erosion, the difficulty of removing the mesh, and the risk of permanent injury.

43. Defendant chose to over-promote the safety, efficacy and benefits of the Products instead.

44. Defendant's intent and purpose in making these misrepresentations was to deceive the public, the medical community, and Plaintiff; to gain the confidence of the public, the medical community, and Plaintiff; to falsely assure them of the quality and fitness for use of the Products; and induce Plaintiff, the public and the medical community to request, recommend, prescribe, dispense, purchase, and continue to use the Products.

45. Upon information and belief, Defendant made claims and representations in its documents submitted to the FDA and its reports to the public and to healthcare professionals and in advertisements that the Products did not present serious health risks.

46. These representations, and others made by Defendant, were false when made and/or were made with the pretense of actual knowledge when such knowledge did not actually exist, and were made recklessly and without regard to the true facts.

47. These representations, and others made by Defendant, were made with the intention of deceiving Plaintiff, Plaintiff's healthcare professionals and other members of the healthcare community, and were made in order to induce Plaintiff, and her healthcare professionals, to rely on misrepresentations, and caused Plaintiff to purchase, rely, use, and request the Products and their healthcare professionals to dispense, recommend, or prescribe the Products.

48. Defendant recklessly and/or intentionally falsely represented the dangerous and serious health and safety concerns inherent in the use of the Products to the public at large, for the purpose of influencing the sales of products known to be dangerous and defective, and/or not as safe as other alternatives. Defendant utilized direct-to-consumer advertising to market, promote, and advertise the Products.

49. At the time the representations were made, Plaintiff and his healthcare providers did not know the truth about the dangers and serious health and/or safety risks inherent in the use of the Products. Plaintiff did not discover the true facts about the dangers and serious health and/or safety risks, nor did Plaintiff discover the false representations of Defendant, nor would Plaintiff with reasonable diligence have discovered the true facts or Defendant's misrepresentations.

50. Had Plaintiff known the true facts about the dangers and serious health and/or safety risks of the C-QUR Mesh Products, Plaintiff would not have purchased, used, or relied on Defendant's products.

51. At all relevant times herein, Defendant continued to promote C-QUR Mesh Products as safe and effective even when no clinical trials had been done supporting long or short term efficacy.

52. In doing so the Defendant concealed the known risks and failed to warn of known or scientifically knowable dangers and risks associated with the C-QUR Mesh Products for treatment of hernia repair, chest wall reconstruction and for use in traumatic wounds.

53. At all relevant times herein, Defendant failed to provide sufficient warnings and instructions that would have put Plaintiff and the general public on notice of the dangers and adverse effects caused by implantation of the C-

QUR Mesh Products system including, but not limited to, mesh erosion, dense adhesions, worsening dyspareunia, chronic pain, infection, sepsis, permanent disfigurement and multiple surgeries for mesh removal.

54. The C-QUR Mesh Products as designed, manufactured, distributed sold and/or supplied by Defendant were defective as marketed due to inadequate warnings, instructions, labeling and/or inadequate testing in the presence of Defendants knowledge of lack of health safety.

55. At all times herein mentioned, the officers and/or directors of the Defendants named herein participated in, authorized and/or directed the production and promotion of the aforementioned products when they knew of the hazards and dangerous propensities of said products, and thereby actively participated in the tortuous conduct that resulted in the injuries suffered by Plaintiff.

FRAUDULENT CONCEALMENT

56. Defendant's failure to document or follow up on the known defects in its product, and concealment of known defects, constitutes fraudulent concealment that equitably tolls applicable statutes of limitation.

57. Defendant is estopped from relying on the statute of limitations defense because Defendant actively concealed the defects, suppressing reports, failing to follow through on FDA notification requirements, and failing to

disclose known defects to physicians. Instead of revealing the defects, Defendant continued to represent its products as safe for their intended use.

58. Defendant is and was under a continuing duty to disclose the true character, quality, and nature of risks and dangers associated with their product. Because of Defendant's concealment of the true character, quality and nature of their product, Defendant is estopped from relying on any statute of limitations defense.

59. Defendant furthered this fraudulent concealment through a continued and systematic failure to disclose information to Plaintiff, physicians and the public.

60. Defendant's acts before, during and/or after the act causing Plaintiff's injury prevented Plaintiff from discovering the injury or cause thereof.

61. Defendant's conduct, as described in the preceding paragraphs, amounts to conduct purposely committed, which Defendant must have realized was dangerous, heedless and reckless, without regard to the consequences or the rights and safety of Plaintiff.

FIRST CAUSE OF ACTION

[Strict Product Liability - Failure to Warn]

62. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation set forth in this Complaint.

63. Defendant, manufactured, sold and/or distributed the C-QUR Mesh Products to Plaintiff to be used for treatment of hernia repair, chest wall reconstruction, or for use in traumatic injuries.

64. At all times mentioned herein, the C-QUR Mesh Products were and are, dangerous and presented a substantial danger to patients who were implanted with the C-QUR Mesh Devices, and these risks and dangers were known or knowable at the time of distribution and implantation in Plaintiff. Ordinary consumers would not have recognized the potential risks and dangers the C-QUR Mesh Products posed to patients because its uses were specifically promoted to improve the health of such patients. The C-QUR Mesh Products were used in a way reasonably foreseeable to Defendant by Plaintiff. Defendant failed to provide warnings of such risks and dangers to Plaintiff as described herein.

65. As a result of the implantation of the C-QUR Mesh Products, Plaintiff suffered debilitating injuries including mesh erosion, hardening, chronic pain and worsening dyspareunia, leading to the need for dangerous and serious surgery.

SECOND CAUSE OF ACTION

[Strict Liability]

66. Plaintiff hereby incorporates by reference, as if fully set forth herein,

each and every allegation set forth in this Complaint.

67. The C-QUR Mesh Products were manufactured and/or supplied by the Defendant, and were placed into the stream of commerce by the Defendant in a defective and unreasonably dangerous condition in that the foreseeable risks exceeded the benefits associated with its design of formulation.

68. Alternatively, C-QUR Mesh Products manufactured and/or supplied by the Defendant were defective in design or formulation, inadequate warning or instruction and/or inadequate post-marketing warnings or instructions in that when it was placed in the stream of commerce, it was unreasonably dangerous.

69. As a result of the defective unreasonably dangerous condition of these products manufactured and/or supplied by the Defendant, Plaintiff was caused to suffer the herein described injuries and damages.

70. Defendant acted with conscious and deliberate disregard of the foreseeable harm caused by C-QUR Mesh Products.

THIRD CAUSE OF ACTION

[Negligence]

71. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation set forth in this Complaint.

72. Defendant and its representatives were manufacturers and/or distributors of C-QUR Mesh Products. At all times herein, Defendant had a duty

to properly manufacture, compound, test, inspect, package, label, distribute, market, examine, maintain supply, provide proper warnings and prepare for use and sell the aforesaid product.

73. Defendants breached their duty to properly manufacturer, compound, test, inspect, package, label, distribute, market, examine, maintain supply, provide proper warnings and prepare for use and see the aforesaid C-QUR Mesh Products, as set forth herein.

74. As a result of Defendant's breach of their duty to Plaintiff, Plaintiff suffered injuries as set forth herein.

FOURTH CAUSE OF ACTION

[Breach of Implied Warranty]

75. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation set forth in this Complaint.

76. Defendant impliedly warranted that the C-QUR Mesh Products, which Defendant designed, manufactured, assembled, promoted and sold to Plaintiff was merchantable and fit and safe for ordinary use. Defendant further impliedly warranted that its C-QUR Mesh Products were fit for the particular purpose of correcting Plaintiff's hernia repair.

77. Defendant's C-QUR Mesh Products were defective, unmerchantable, and unfit for ordinary use when sold, and unfit for the particular purpose for

which they were sold, and subjected Plaintiff to severe and permanent injuries. Therefore, Defendant breached the implied warranties of merchantability and fitness for a particular purpose when its mesh system was sold to Plaintiff, in that the C-QUR Mesh Products are defective and otherwise failed to function as represented and intended.

78. As a result of Defendant's breach of the implied warranties of merchantability and fitness for a particular purpose, Plaintiff has sustained and will continue to sustain the injuries and damages described herein and is therefore entitled to compensatory damages.

79. After Plaintiff was made aware his injuries were a result of the aforesaid C-QUR Mesh Products, Defendant had ample and sufficient notice of the breach of said warranty.

FIFTH CAUSE OF ACTION

[Breach of Express Warranty]

80. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation set forth in this Complaint.

81. Defendant expressly warranted to Plaintiff and/or their authorized agents or sales representatives, in publications, and other communications intended for medical patients, and the general public, that the defective C-QUR Mesh Products were safe, effective, fit and proper for their intended use.

82. Plaintiff and Plaintiff's physicians reasonably relied upon the skill and judgment of Defendant, and upon said express warranty, in using the aforesaid product. The warranty and representations were untrue in that the product caused severe injury to Plaintiff and was unsafe and, therefore, unsuited for the use in which it was intended and caused Plaintiff to sustain damages and injuries herein alleged.

83. As soon as the true nature of the product, and the fact that the warranty and representations were false, were ascertained, said Defendant had ample and sufficient notice of the breach of said warranty.

SIXTH CAUSE OF ACTION

[Negligent Misrepresentation]

84. Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation set forth in this Complaint.

85. At all relevant times herein, Defendant represented to Plaintiff and his physicians that the C-QUR Mesh Products were safe to use to correct hernia repair, chest wall reconstruction and repair to traumatic injuries knowing that the C-QUR Mesh Products were defective and capable of causing the injuries described herein.

86. The Defendant made the aforesaid representations with no reasonable ground for believing them to be true when defendants own data showed the C-

QUR Mesh Products to be defective and dangerous when used in the intended manner.

87. The aforesaid representations were made to the physician(s) prescribing the C-QUR Mesh Products prior to the date it was prescribed to Plaintiff and used by his physicians with the intent that Plaintiff and his physician(s) rely upon such misrepresentations about the safety and efficacy of the C-QUR Mesh Products. Plaintiff and his physicians did reasonably rely upon such representations that the aforesaid product was safe for use to correct Plaintiff's hernia repair.

88. The representations by said Defendant to Plaintiff were false, and thereby caused Plaintiff's injuries described herein.

ADOPTION OF MASTER COMPLAINT CLAIMS

To the extent that the following Counts are included in the Master Complaint brought by Plaintiff in MDL 1842, Plaintiff Carl Smith adopts them by reference:

(x) Negligence

(x) Strict Liability - Manufacturing Defect

(x) Strict Liability - Failure to Warn

(x) Strict Liability - Defective Product

(x) Strict Liability - Design Defect

(x) Common Law Fraud

(x) Fraudulent Concealment

(x) Constructive Fraud

(x) Negligent Misrepresentation

(x) Negligent Infliction of Emotional Distress

(x) Breach of Express Warranty

(x) Breach of Implied Warranty

(x) Violation of Consumer Protection Laws

(x) Gross Negligence

(x) Unjust Enrichment

(x) Punitive Damages

(x) Discovery Rule and Tolling

(x) Other Count(s) (Please state factual and legal basis for other claims below):

WHEREFORE Plaintiff prays for judgment as follows:

1. For general damages in a sum within the jurisdiction of this Court;

2. For medical, hospital, and incidental expenses, according to proof;

3. For loss of earnings and for loss of earning capacity, according to proof;

4. For costs of suit and legal interest;

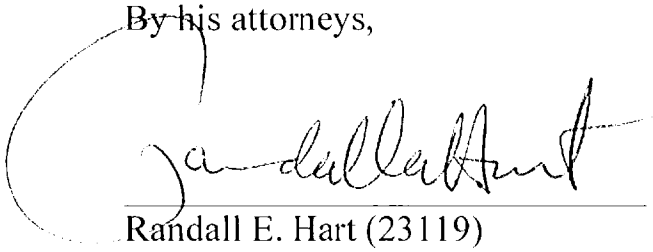
5. For such other relief as the Court deems just and proper.

CONCLUSION

WHEREFORE, the Plaintiff requests that Defendant be cited in terms of law to appear and answer herein; that Plaintiff has judgment against Defendant, for the amount of actual damages, and all other damages under applicable federal and state law to which he is entitled; for post judgment interest at the applicable legal rate; for all recoverable Court costs incurred in this litigation; and for such other and further relief, to which Plaintiff may show himself entitled.

Respectfully submitted,

PLAINTIFF, CARL SMITH
By his attorneys,

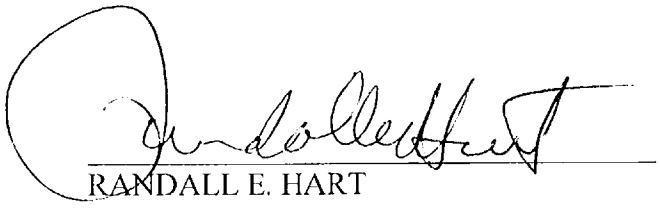


Randall E. Hart (23119)
Aaron Broussard, T.A. (30134)
Broussard and Hart, LLC
1301 Common Street
Lake Charles, LA 70601
(337) 439-2450 (telephone)
(337) 439-3450 (facsimile)
aaronbroussard@gmail.com

Robert J. Bonsignore
Bonsignore, LLC
193 Plummer Hill Road
Belmont, NH 03220
Telephone: 781-350-0000
Rbonsignore@classactions.us

CERTIFICATE OF SERVICE

I hereby certify that on the 25 day of February, 2014, I electronically filed the forgoing with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record.



RANDALL E. HART

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
Carl Smith

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Randall E. Hart, Aaron Broussard, Broussard and Hart, LLC
1301 Common Street
Lake Charles, LA 70601 (337) 439-2450

DEFENDANTS
Atrium Medical Corporation

County of Residence of First Listed Defendant Hillsborough
(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
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 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)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

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

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☒ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

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 U.S.C. Section 1332(d)
Brief description of cause:
defect in C-QUR mesh product and marketing of product

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND $ $1 million
CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*:
JUDGE _____ DOCKET NUMBER _____

DATE
02/25/2014

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

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

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Louisiana

Carl Smith

Plaintiff(s)

v.

Atrium Medical Corporation

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Atrium Medical Corporation
through its agent for service of process,
Gary P. Sufat
5 Westworth Drive
Hudson, NH 03051

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Randall E. Hart
Aaron Broussard
Broussard and Hart, LLC
1301 Common Street
Lake Charles, LA 70601

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk