UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

ISRAEL ARAMA, Individually and as Executor of the Estate of ESTHER ARAMA, Deceased, Plaintiff, vs. **ETHICON, INC.; ETHICON ENDO-SURGERY, INC.; JOHNSON & JOHNSON SERVICES, INC.; JOHNSON & JOHNSON; VENTION MEDICAL, INC. (F/K/A THE MEDTECH GROUP INC.); VENTION MEDICAL ACQUISITION CO.; VENTION MEDICAL HOLDINGS, INC.; KARL STORZ ENDOSCOPY-AMERICA, INC.; AND KARL STORZ ENDOVISION, INC.**, Defendants.	**Civil Action No.:** **COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff, ISRAEL ARAMA, Individually and as Executor of the Estate of ESTHER ARAMA, by his undersigned counsel, alleges that at all relevant times hereinafter mentioned:

I. INTRODUCTION

1. This lawsuit is a personal injury action against Defendants, as defined below, who were responsible for designing, researching, developing, testing, manufacturing, packaging, labeling, marketing, promoting, distributing and/or selling Laparoscopic Power Morcellators, which are medical devices used during laparoscopic uterine surgery.

2. Plaintiff-Decedent, ESTHER ARAMA, underwent a surgical procedure with a Laparoscopic Power Morcellator, which caused the spread and upstaging[1] of occult (i.e., hidden) cancer and, ultimately, lead to her death.

II. PARTIES

3. At the time of her death, Plaintiff-Decedent, ESTHER ARAMA, (referred to hereinafter as "Plaintiff-Decedent"), was an adult citizen of the United States and was domiciled in the City of Valley Stream in the State of New York, Nassau County.

4. Plaintiff, ISRAEL ARAMA, Individually and as Executor of the Estate of ESTHER ARAMA (referred to hereinafter as "Plaintiff-Spouse"), is an adult citizen of the United States of America and is domiciled in the City of Valley Stream in the State of New York, Nassau County.

5. Hereinafter Plaintiff-Decedent and Plaintiff-Spouse are collectively referenced as "Plaintiffs".

6. Defendant ETHICON, INC. is a corporation organized under the laws of the State of New Jersey, with its principal place of business at Route 22 West Somerville, New Jersey 08876.

7. Defendant ETHICON ENDO SURGERY, INC. is an Ohio corporation with its principal place of business at 4545 Creek Road, Blue Ash, Ohio 45242.

[1] A cancer's stage is a reflection of the extent and/or severity of the disease and helps in determining the prognosis and appropriate treatment options. "Upstaging" refers to an increase in the extent or severity of the disease in a given patient, in this case due to the spread and dissemination of tumors within the peritoneal cavity caused by the Laparoscopic Power Morcellator that were encapsulated prior to the power morcellator surgery.

8. Defendant JOHNSON & JOHNSON SERVICES, INC. is a New Jersey corporation with its principal place of business at 1 Johnson & Johnson Plaza, New Brunswick, New Jersey 08933.

9. Defendant JOHNSON & JOHNSON is a New Jersey corporation with its principal place of business at 1 Johnson & Johnson Plaza, New Brunswick, New Jersey 08933.

10. Defendant ETHICON, INC., Defendant ETHICON ENDO-SURGERY, INC., Defendant JOHNSON & JOHNSON SERVICES, INC. and Defendant JOHNSON & JOHNSON are collectively referred to as the "J&J Defendants".

11. On information and belief, Defendant JOHNSON & JOHNSON owns all of the common stock and other ownership interests of Defendants ETHICON, INC., ETHICON ENDO-SURGERY, INC., and JOHNSON & JOHNSON SERVICES, INC.

12. On information and belief, JOHNSON & JOHNSON is either the direct or indirect owner of substantially all the stock or other ownership interests of ETHICON, INC., ETHICON ENDO-SURGERY, INC., and JOHNSON & JOHNSON SERVICES.

13. On information and belief, JOHNSON & JOHNSON, ETHICON, INC., ETHICON ENDO-SURGERY, INC. and JOHNSON & JOHNSON SERVICES were the agents, representatives, joint venturers, alter egos, co-conspirators, consultants, predecessors, successors, servants or employees of each other.

14. In doing the acts alleged herein, said J&J Defendants were acting in the course and scope of such agency, representation, joint venture, conspiracy, consultancy, predecessor agreement, successor agreement, service and employment, with knowledge,

acquiescence and ratification of each other.

15. Defendant VENTION MEDICAL, INC. (F/K/A THE MEDTECH GROUP INC.) is a corporation organized and/or existing under the laws of the State of New Jersey with its principal place of business at 6 Century Road, South Plainfield, New Jersey 07080.

16. Defendant VENTION MEDICAL ACQUISITION CO. is a corporation organized and/or existing under the laws of the State of Delaware with its principal place of business at 1800 Larimer Street, Suite 2200, Denver, Colorado 80202.

17. Defendant VENTION MEDICAL HOLDINGS, INC. is a corporation organized and/or existing under the laws of the State of Delaware with its principal place of business at 1800 Larimer Street, Suite 2200, Denver, Colorado 80202.

18. On information and belief, Defendant VENTION MEDICAL ACQUISITION CO. owns all of the common stock and other ownership interests of Defendant VENTION MEDICAL, INC. (F/K/A THE MEDTECH GROUP INC.).

19. On information and belief, Defendant VENTION MEDICAL HOLDINGS, INC. owns all of the common stock and other ownership interests of Defendant VENTION MEDICAL ACQUISITION CO.

20. On information and belief, VENTION MEDICAL HOLDINGS, INC., VENTION MEDICAL ACQUISITION CO., and VENTION MEDICAL, INC. (F/K/A THE MEDTECH GROUP INC.) were the agents, representatives, joint venturers, alter egos, co-conspirators, consultants, predecessors, successors, servants or employees of each other.

21. Defendant VENTION MEDICAL HOLDINGS, INC., Defendant VENTION MEDICAL ACQUISITION CO., and Defendant VENTION MEDICAL, INC. (F/K/A THE MEDTECH GROUP INC.) are collectively referred to as "VENTION MEDICAL".

22. On information and belief, JOHNSON & JOHNSON and VENTION MEDICAL, INC. were the agents, representatives, joint venturers, alter egos, co-conspirators, consultants, predecessors, successors, servants or employees of each other.

23. In doing the acts alleged herein, said J&J Defendants and VENTION MEDICAL were acting in the course and scope of such agency, representation, joint venture, conspiracy, consultancy, predecessor agreement, successor agreement, service and employment, with knowledge, acquiescence and ratification of each other.

24. Defendant KARL STORZ ENDOSCOPY-AMERICA, INC. is a corporation organized and/or existing under the laws of the State of California with its principal place of business at 2151 East Grand Avenue, El Segundo, California 90245.

25. Defendant KARL STORZ ENDOVISION, INC. is a corporation organized and/or existing under the laws of the State of Massachusetts with its principal place of business at 91 Carpenter Hill Road, Charlton, Massachusetts 01507.

26. Defendants ETHICON, INC., ETHICON ENDO-SURGERY, INC., JOHNSON & JOHNSON SERVICES, INC., JOHNSON & JOHNSON, VENTION MEDICAL, INC. (F/K/A THE MEDTECH GROUP INC.), VENTION MEDICAL ACQUISITION, CO., VENTION MEDICAL HOLDINGS, INC., KARL STORZ ENDOSCOPY-AMERICA, INC., KARL STORZ ENDOVISION, INC. are collectively

referred to as the "Defendants".

27. In doing the acts alleged herein, said Defendants were acting in the course and scope of such agency, representation, joint venture, conspiracy, consultancy, predecessor agreement, successor agreement, service and employment, with knowledge, acquiescence and ratification of each other.

28. On information and belief, at all relevant times, Defendants expected or should have expected that their acts would have consequences within the United States of America and the States of New York and Minnesota, and derived and derive substantial revenue from interstate commerce.

29. On information and belief, at all relevant times, Defendants have transacted and conducted business in the States of New York and Minnesota, and/or contracted to supply goods and services within the States of New York and Minnesota, and these causes of action have arisen from the same.

30. On information and belief, at all relevant times, Defendants committed tortious acts without the States of New York and Minnesota causing injury within the State of New York out of which act(s) these causes of action arise.

III. VENUE AND JURISDICTION

31. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because complete diversity exists between Plaintiffs, who are citizens of the State of New York, which is different from the States where the Defendants are incorporated and have their principal places of business, and the amount in controversy

for the Plaintiffs exceeds $75,000, exclusive of interest and costs.

32. Venue is proper within this District pursuant to 28 U.S.C. § 1391 and it is a judicial district where Defendants are subject to personal jurisdiction in accordance with 28 U.S.C. §§ 1391(a) and (c).

IV. BACKGROUND AND FACTS

A. Plaintiff-Decedent's Surgery and the Resultant Spread of Life-Threatening Cancer

33. On June 6, 2011, Plaintiff-Decedent ESTHER ARAMA underwent a laparoscopic surgery known as a supracervical hysterectomy at North Shore University Hospital in Manhasset, New York, for the removal of uterine fibroids, at which time her surgeon, Dr. Michael L. Nimaroff, used a Laparoscopic Power Morcellator for tissue removal.

34. Prior to undergoing surgery, Plaintiff-Decedent underwent testing and evaluation which showed an enlarged uterus due to intramural and submucosal fibroids; however, there was no evidence of disseminated or metastatic cancer.

35. Prior to undergoing surgery, Plaintiff-Decedent was not warned of the high-risk that use of a Laparoscopic Power Morcellator could disseminate and upstage occult cancer.

36. Following the surgery, pathology was performed and the surgical pathology report indicated that the fibroids were benign leiomyoma.

37. On March 18, 2014, Plaintiff-Decedent presented to Dr. David Eskreis, a gastroenterologist, complaining of abdominal pain for five days.

38. Plaintiff-Decedent underwent testing and evaluation which revealed she had two soft tissue masses in her abdomen and cysts on her right and left ovaries.

39. On March 24, 2014, Plaintiff-Decedent presented to Dr. Jill Whyte, a gynecologic oncologist, at North Shore University Hospital for evaluation and treatment of her abdominal masses at which time Dr. Whyte recommended emergency tumor excision surgery.

40. On March 28, 2014, Plaintiff-Decedent underwent laparoscopic tumor excision surgery performed by Dr. Whyte at North Shore University Hospital.

41. A pathological examination of the tumors indicated that Plaintiff-Decedent had metastatic high grade leiomyosarcoma with suspected gynecologic origin.

42. On April 18, 2014, Plaintiff-Decedent presented to Memorial Sloan Kettering Cancer Center ("MSKCC") for evaluation and treatment, and was evaluated by surgeon, Yukio Sonoda, MD, and oncologist, Vicky Makker, MD.

43. During the April 18, 2014 consultation, Dr. Makker requested the original pathology slides from Plaintiff-Decedent's June 2011 laparoscopic hysterectomy.

44. Upon review of the slides, the pathologists at MSKCC concluded that occult cancer was present in Plaintiff-Decedent fibroids at the time of her laparoscopic hysterectomy.

45. On May 15, 2014, Plaintiff-Decedent started treatment with Anastrazole medication for her leiomyosarcoma.

46. After beginning this treatment, it was subsequently discontinued due to the progression of Plaintiff-Decedent's cancer.

47. On June 19, 2014, Plaintiff-Decedent started a cycle of Gemcitabine and Docetaxel chemotherapy treatment.

48. Over the next three months, Plaintiff-Decedent underwent several cycles of chemotherapy treatment.

49. On October 6, 2014, Plaintiff-Decedent presented to Mercy Medical Center complaining of nausea, vomiting, and shortness of breath believed to be caused by a recent chemotherapy treatment.

50. Plaintiff-Decedent underwent a chest x-ray revealing she had a right pleural effusion, buildup of fluid in the linings of the lung, and a partial lung collapse.

51. On October 9, 2014, Plaintiff-Decedent underwent a surgery to reduce pain and built up fluid around the lungs.

52. On October 14, 2014, Plaintiff-Decedent was discharged with a diagnosis of end stage leiomyosarcoma and began home hospice services.

53. On October 19, 2014, Plaintiff-Decedent again presented to Mercy Medical Center complaining of shoulder pain, abdominal pain, fatigue, nausea, and weakness.

54. During her visit, Plaintiff-Decedent underwent CT scans of her abdomen, pelvis, and chest which revealed extensive peritoneal carcinomatosis throughout her mid and lower abdomen and right pleural effusions.

55. On October 21, 2014, Plaintiff-Decedent underwent an ultrasound guided right lower quadrant paracentesis procedure where surgeons were only able to remove fifty (50) milliliters of dark red ascites due to extensive peritoneal seeding of her tumor.

56. On October 24, 2015, Plaintiff-Decedent was discharged home with home hospice services to follow.

57. On December 3, 2014, Plaintiff-Decedent passed away of cardiac pulmonary arrest secondary to leiomyosarcoma.

58. Had the Laparoscopic Power Morcellator used on Plaintiff-Decedent not disseminated and fulminated cancerous cells and tissue, she would not have suffered and been diagnosed with an advanced stage cancer.

59. Had the Laparoscopic Power Morcellator used on Plaintiff-Decedent not disseminated and fulminated cancerous cells and tissue, she would not have needed to undergo the invasive, debilitating and damaging chemotherapy treatment nor would she have succumbed to the spread of her cancer to her lungs which ultimately caused her death.

60. The Laparoscopic Power Morcellator used on Plaintiff-Decedent during her 2011 surgery caused this specific cancerous condition, profoundly and gravely injuring Plaintiff-Decedent, and caused her death.

61. As a result of the conduct alleged herein by Defendants, Plaintiff-Decedent suffered serious bodily injury and death, and incurred medical expenses to treat her injuries and condition, and has lost wages.

B. Background on Laparoscopic Power Morcellators

62. In the United States, it is estimated that 650,000 women a year will undergo a surgical myomectomy or hysterectomy for the management of symptomatic uterine fibroids.

63. In conventional **non**-Power Morcellator hysterectomies, the women's entire uterus is removed essentially intact and in conventional myomectomies the uterine fibroids are removed essentially intact and the women's uterus is left intact.

64. In the last few decades, laparoscopic procedures with electric Laparoscopic Power Morcellator devices to remove uterine fibroids or other tissue, have increasingly replaced traditional open abdominal surgical hysterectomies, myomectomies, and laparotomies.

65. Laparoscopic Power Morcellators are electrically powered medical tools with spinning blades that shred, grind, and core tissue into smaller pieces or fragments so the tissue can be removed through small incisions or extraction "ports" in the abdomen.

66. Laparoscopic Power Morcellators are designed with a grasper that pulls the tissue up against the sharp, rotating blades, severing the shredded tissue from the rest of the large mass and continuously pulling cut portions of tissue up through the tube.

67. The morcellator's spinning blade shreds the tissue masses at a high velocity and can disperse cellular particles from the shredded tissue throughout the abdomen during surgery.

68. During tissue morcellation, morcellated fragments can be left in the abdomino-pelvic cavity, or attach to surrounding organs (such as the loops of the bowel),

and cancerous cells can travel to remote areas of the body through the vasculature or lymphatic system.

69. Once disseminated in the body, morcellated fragments can become implanted in surrounding tissue or organs, and begin to grow.

70. When tissue fragments escape into the abdomino-pelvic cavity and seed in other tissue or organs, complications can arise months or years after the surgery.

71. As a result, Laparoscopic Power Morcellator can spread and upstage or worsen a women's occult cancer, changing the stage of the cancer from an early stage cancer into a much higher stage cancer and, as discussed below, significantly worsening a women's prognosis.

72. Defendants were responsible for designing, researching, developing, testing, manufacturing, packaging, labeling, marketing, promoting, distributing and/or selling Laparoscopic Power Morcellators.

C. The Laparoscopic Power Morcellator Used In Plaintiff-Decedent's Surgery Was Defective in Design and Created an Avoidable Risk of Harm to Plaintiff-Decedent, Which Significantly Worsened Plaintiff-Decedent's Chance of Survival

73. Long before Plaintiff-Decedent underwent surgery in 2011, Defendants knew or should have known that their Laparoscopic Power Morcellators could cause occult malignant tissue fragments to be disseminated and implanted in the body, which, in turn, upstages any cancer present and significantly worsens a woman's chance of survival.

74. Although evidence was available to Defendants for years before Plaintiff-

Decedent's surgery, Defendants failed to respond to multiple published studies and reports describing the risk of disseminated and upstaging or worsening occult cancer with morcellator use, and failed to design their Laparoscopic Power Morcellators in a manner to reduce this life-threatening risk.

75. On information and belief, Defendants, as is industry practice, daily monitor the medical and lay media for articles on issues concerning their products, Laparoscopic Power Morcellators.

76. On information and belief, many, if not all, of the literature cited below was collected by and known to the Defendants (or should have been known to the Defendants) at or before the time the literature was published.

77. ***First***, Defendants knew or should have known that their Laparoscopic Power Morcellators could cause occult malignant tissue fragments to be disseminated and implanted in the body.

a. Indeed, on August 6, 1991, a patent for a Surgical Tissue Bag and Method for Percutaneously Debulking Tissue was issued that describes the potential for Laparoscopic Power Morcellators to disseminate and implant malignant tissue fragments in the body.

b. The patent for the surgical tissue bag stated:

> Another problem associated with the debulking, removal or morcellation of large tissue volume is the concern for containing malignant or pathogenic tissue. ***The morbidity of patients significantly increases when malignant cells of such large volume tissue are permitted to come in contact with surrounding healthy tissue***. A malignancy would typically indicate a more invasive procedure in which the cavity is

> opened and the affected tissue is removed. These invasive open cavity procedures increase the recovery period of the patient and subject the patient to additional discomfort and complications.
>
> As a result, ***the debulking of large malignant tissue volumes percutaneously through an access sheath presents significant morbidity risks to the patient***. (emphasis added).

c. The patent Summary of the invention further stated that "containment of the tissue within the bag also prevents the spread of malignant cells to healthy tissue in the body cavity."

d. The Surgical Tissue Bag patent was publically available and was available to the Defendants, and/or known to Defendants, before they first sought approval of their Laparoscopic Power Morcellators.

e. Also, prominent medical journals reporting on Laparoscopic Power Morcellators and the risk of spreading undetected cancer also began to accumulate in the 1990s, and continued thereafter.

f. In 1997, Achim Schneider published a case report in a medical journal, known to the Defendants as the American Journal of Obstetrics and Gynecology, titled "Recurrence of unclassifiable uterine cancer after modified laparoscopic hysterectomy with morcellation," which reported a patient who underwent a laparoscopic supracervical hysterectomy by manual morcellation. Achim Schneider, *Recurrence of unclassifiable uterine cancer after modified laparoscopic hysterectomy with morcellation*, 177 J. AM. OBSTET. GYNECOL. 478, 478-79 (1997).

g. The following year the patient died due to the rapid progression of uterine adenocarcinoma that had been undetected prior to surgery. *Id*. at 478.

h. Schneider cautioned that evaluation for malignancy prior to surgery "grows even more important and should be mandatory when uteri are increasingly morcellated by introduction of laparoscopic techniques." *Id.* at 479.

i. In 1998, Francis L. Hutchins, Jr. and Elizabeth M. Reinoehl published a case report in the Journal of The American Association of Gynecologic Laparoscopists, which was known to the Defendants, in which the authors explained that "[b]ecause of the large quantity of tissue of such a uterus, it would be anticipated that numerous fragments would be generated during morcellation." Francis L. Hutchins, Jr. and Elizabeth M. Reinoehl, *Retained Myoma after Laparoscopic Supracervical Hysterectomy with Morcellation*, 5 J. AM. ASSOC. GYNECOL. LAPAROSC. 293, 293-95 (1998).

j. The authors cautioned that the morcellated fragments could become concealed in surrounding organs making it difficult for the surgeon to identify and remove all tissue fragments. *Id*. at 294.

k. In 2005, D. Yvette LaCoursiere et al. published a case report in The Journal of Minimally Invasive Gynecology which reported that "[t]he use of a power morcellator may produce smaller fragments than other techniques." D. Yvette LaCoursiere et al., *Retained fragments after total laparoscopic hysterectomy*, 12 J. MINIM. INVAS. GYNCOL. 67, 68 (2005).

l. According to the authors, "implantation, rather than resorption of residual fragments of cervix and myometrium can occur," a problem which they reported "ha[d] implications for possible benign and malignant sequelae." *Id*.

m. In 2010, in the Journal of Minimally Invasive Gynecology, Demetrio Larraín et al. explained that, "[i]f retained fragments [from morcellation] can establish a blood supply and grow with benign disease, it is of concern that in situations in which an unsuspected malignant lesion is inadvertently morcellated, aberrant fragments will grow and metastasize." Demetrio Larraín et al., *"Iatrogenic" Parasitic Myomas: Unusual Late Complications of Laparoscopic Morcellation Procedures*, 17 MINIM. INVAS. GYNCOL., 719, 722 (2010) ("Larraín et al. paper").

n. Based on this evidence, Defendants were on notice that their Laparoscopic Power Morcellators exposed patients to a significant risk of disseminating and worsening occult cancer.

78. ***Second***, Defendants knew or should have known that, for women undergoing laparoscopic hysterectomies or myomectomies for presumed fibroids, the risk of having a hidden deadly sarcoma was much higher than 1 in 10,000.

a. In 1990, Steven Leibsohn et al. published a study titled "Leiomyosarcoma in a series of hysterectomies performed for presumed uterine leiomyomas" in the American Journal of Obstetrics & Gynecology in which the authors found that "…women with signs and symptoms of [benign] uterine

leiomyomas [fibroids] that warrant hysterectomy have about a 1 in 140 chance of having a uterine leiomyosarcoma." Steven Leibsohn et al., *Leiomyosarcoma in a series of hysterectomies performed for presumed uterine leiomyomas*, 162 J. AM. OBSTET. GYNECOL. 968, 972 (1990) ("Leibsohn et al. paper") (emphasis added).

b. In 1999, Satoru Takamizawa et al. published another study titled "Risk of Complications and Uterine Malignancies in Women Undergoing Hysterectomy for Presumed Benign Leiomyomas" in Gynecologic and Obstetric Investigation, which found that 2/923 women who underwent hysterectomies for presumed benign fibroids had undiagnosable hidden sarcomas before their hysterectomies. Satoru Takamizawa et al., *Risk of Complications and Uterine Malignancies in Women Undergoing Hysterectomy for Presumed Benign Leiomyomas*, 48 GYNECOL. OBSTET. INVEST. 193, 196 (1999).

c. Takamizawa et al. reported that their study results were consistent with the findings of other studies which suggested that 2–5 patients per 1,000 who undergo surgery for presumed fibroids have uterine sarcomas. *Id*.

d. This evidence was available to Defendants.

e. However, on information and belief, in seeking for approval for their Laparoscopic Power Morcellators decades before Plaintiff-Decedent underwent surgery, and, later, in promoting their devices to the medical

community, Plaintiff-Decedent and Plaintiff-Decedent's surgeon, Defendants ignored this data and touted a much lower 1 in 10,000 risk.

79. ***Third***, Defendants knew or should have known that women could not be adequately screened for malignancy prior to undergoing Laparoscopic Power Morcellation surgery because certain types of cancers, including sarcomas, can mimic the radiographic appearance of benign uterine fibroids.

a. In the 1990 Leibsohn et al. study, discussed above, the authors described the difficulties in diagnosing leiomyosarcoma (a particularly aggressive form of cancer) preoperatively, noting that "abdominal ultrasonography of the pelvis and cervical cytology are not helpful preoperative tests for the diagnosis [of] leiomyosarcoma of the uterus." *See* Leibsohn et al. paper, at 192.

b. Additional evidence became available to Defendants in 2001, when Elizabeth A. Stewart published an article in the Lancet, which explained that malignant leiomyosarcoma and benign fibroids may share histological features; thereby, making it more difficult for clinicians to identify the malignant potential of smooth muscle uterine tumors. Elizabeth A. Stewart, *Uterine Fibroids*, 357 THE LANCET 293, 293-98 (2001).

c. The difficult in diagnosing uterine sarcoma preoperatively was not limited to leiomyosarcoma.

d. Upon information and belief, in 2006, Robert Lamparter, M.D., a pathologist at Evangelical Community Hospital in Lewisburg, Georgia,

wrote to the former medical director of Ethicon Women's Health and Urology, a JOHNSON AND JOHNSON subsidiary, imploring the company to "reconsider the risk [of power morcellators] to the patient." *See* Kris Mamula, *J&J alerted in 2006 to power morcellator's surgical risks, doctors says*, Pittsburgh Business Times (May 30, 2014), www.bizjournals.com/pittsburgh/news/2014/05/30/j-j-alerted-in-2006-to-devices-surgical-risks.html (last visited 8/1/2014).

e. Dr. Lamparter advised Ethicon that, "[v]irtually all uteruses have some sort of pre-op screening, whether it be an endometrial biopsy or an ultrasound, so whatever screening is being done misses a certain number of malignancies." *Id.*

f. **However, "[w]hen the operative procedure is a standard hysterectomy, no damage is done. If a morcellation is done, the patient's survival is jeopardized."** *Id.*

g. In 2008, Nisha Bansal et al. published a study in Gynecologic Oncology, in which the authors found that the predictive value of endometrial biopsy or curettage for diagnosing uterine sarcoma was very poor and, thus, "novel diagnostic techniques are needed to accurately identify uterine sarcomas preoperatively." Nisha Bansal et al., *The utility of preoperative endometrial sampling for the detection of uterine sarcoma*, 110 GYNECOL. ONCOL. 43, 47 (2008).

h. Similarly, in 2010, Carl Della Badia and Homa Karini published a case report in the Journal of Minimally Invasive Gynecology, in which they warned that there was "no reliable method for preoperative diagnosis of endometrial sarcoma" and "[s]ensitivity of preoperative endometrial sampling is only 64% for enabling a diagnosis of this tumor." Carl Della Badia and Homa Karini, *Endometrial Stromal Sarcoma Diagnosed after Uterine Morcellation in Laparoscopic Supracervical Hysterectomy*, 17 J. MINIM. INVAS. GYNCOL. 791 (2010).

i. According to the authors, where malignancy is found before surgery, the standard treatment for uterine sarcoma is a total hysterectomy with staging of the cancer, not tissue morcellation. *Id*.

80. ***Fourth***, Defendants knew or should have known that women undergoing surgery with Laparoscopic Power Morcellators suffer worse long-term medical outcomes than women undergoing other available treatment options because of the cancer risks associated with the use of their devices.

a. For example, in 2002, Goto et al. published a study in the International Journal of Gynecologic Cancer, which reported:

> Leiomyosarcoma of the uterus is one of the most difficult neoplasms to cure in gynecologic oncology. Its malignant behaviors such as rapid growth and high rate of metastasis are notorious. ***The 5-year survival in patients with advanced stages (stage III or higher) is less than 10%***, although leiomyosarcoma resembles leiomyoma in clinical features. Until now LMS was diagnosed only in advanced stages or accidentally at total abdominal hysterectomy.

[…]

> Therefore it seems that the effective treatment of LMS is surgical removal of the tumor in the earlier stages. The problem regarding treatment of LMS is the difficult preoperative differential diagnosis of LMS in the early stages from leiomyoma, which is the most common tumor of the uterus.

Goto. et al., *Usefulness of Gd-DTPA contrast-enhanced dynamic MRI and serum determination of LDH and its isozymes in the differential diagnosis of leiomyosarcoma from degenerated leiomyoma of the uterus*, INT. J. GYNECOL. CANCER, 12:354-361, 358 (2002) (emphasis added).

b. Likewise, in 2003, P. Morice et al. published an article in the European Journal of Gynecologic Oncology, in which they found a substantial increase in pelvic recurrence of uterine sarcoma at three (3) months in 34 patients with uterine sarcoma who had morcellation during their initial surgery compared with 89 patients without morcellation. P. Morice et al., *Prognostic value of initial surgical procedure for patients with uterine sarcoma: analysis of 123 patients*, 24 EUR. J. GYNAECOL. ONCOL., 237, 238-39 (2003).

c. The authors concluded that, when the diagnosis of uterine sarcoma is known preoperatively, the optimal treatment for uterine sarcoma is a "monobloc" total abdominal hysterectomy and bilateral salpingo-oophorectomy without morcellation. *Id*. at 239.

d. In 2008, M. H. Einstein et al. presented a prospective study in the International journal of Gynecologic Cancer involving all patients who had

undergone any type of hysterectomy for presumed benign disease and were, subsequently, referred to Memorial Sloan-Kettering between January, 2000 and March, 2006 with diagnosed malignancy based on the final surgical pathology. M.H. Einstein et al., *Management of uterine malignancy found incidentally after supracervical hysterectomy or uterine morcellation for presumed benign disease*, 18 INT. J. GYNECOL. CANCER, 1065, 1066 (2008).

e. According to their review, an astounding 40% percent of patients who underwent morcellation were found to have upstaged cancer compared with only 8% who had a supracervical hysterectomy. *Id*. at 1069.

f. According to the authors, "[***this*] *data support this trend toward worse outcomes in patients who had morcellation procedures***." *Id.*

g. In 2009, Tamar Perri et al. published an article in the International Journal of Gynecological Cancer, in which they explained:

> [u]nfortunately, however, it is not unusual to diagnose LMS [leiomyosarcoma] only postoperatively because its symptoms and signs resemble those of benign leiomyomas (LMs), and there are no imaging techniques for differentiation between the two. Consequently, on the assumption that they have LM, some patients with LMS are treated initially with hysteroscopic or abdominal myomectomy, subtotal hysterectomy, or laparoscopic hysterectomy or myomectomy with a morcellator knife. Those surgical techniques, unlike total abdominal hysterectomy (TAH), are likely to involve tumor injury or cut-through.

Tamar Perri et al., *Uterine Leiomyosarcoma: Does the Primary Surgical*

Procedure Matter?, 19 INT. J. GYNECOL. CANCER 257, 257 (2009).

h. According to the authors, "[their] data demonstrate[d] a significant disadvantage for patients in whom the primary surgery had involved tumor cut-through." *Id*. at 260.

i. In the 2010 Demetrio Larraín et al. study, discussed *above*, they commented that "[i]f malignancy is suspected or known preoperatively, morcellation is formally proscribed. However, this situation [spread of malignant tissue] may occur, even if an appropriate preoperative workup including cervical cytologic analysis and endometrial sample are routinely performed." Larraín et al. paper at 722-23.

j. Consistent with Perri et al.'s findings, in a paper published in 2011 in the Annals of Surgical Oncology, Jeong-Yeol Park et al. found that women undergoing morcellation suffered worse outcomes than women in the non-morcellated treatment group. Jeong-Yeol Park et al., *The Impact of Tumor Morcellation During Surgery on the Outcomes of Patients with apparently Early Low-Grade Endometrial Stromal Sarcoma of the Uterus*, 18 ANN. SURG. ONCOL. 3452-61 (2011) ("Park et al. paper").

k. The authors compared outcomes between patients diagnosed post-operatively with low-grade endometrial stromal sarcoma who had undergone tumor morcellation and those who had not. *Id*. at 3454.

l. They found a statistically significant difference in five-year disease-free survival rates between non-morcellated patients (85%) and morcellation patients (55%). *Id*. at 3455.

m. In the 2011 Park et al. paper, the authors also found that five-year abdomino-pelvic disease-free survival was statistically significantly lower in morcellated patients, with 89% disease-free survival rate in the non-morcellated patients and only 58% in the morcellated group. *Id*. at 3456.

n. The authors noted that "[a]s with other soft tissue sarcomas, iatrogenic rupture and intraperitoneal spillage of tumor may adversely affect the outcomes of patients with apparently early LGESS [low-grade endometrial stromal sarcoma], for whom complete surgical excision is the only established curative treatment modality." *Id*. at 3457.

81. ***Fifth***, Defendants knew or should have known that when malignant tissue undergoes Laparoscopic Power Morcellation, the resultant tissue specimens can delay diagnosis because their condition can prevent the pathologist from properly identifying and staging cancer, which can further worsen a patient's prognosis and treatment outcomes.

a. For example, in 2005, Wuntkal Rekha et al. discuss in their paper published in the Australian and New Zealand Journal of Obstetrics and Gynecology, "[o]ne of the disadvantages of tissue morcellation is loss of the gross appearance of the specimen and the possibility of missing the most suspicious area for the microscopic evaluation." Wuntkal Rekha et al., *Unexpected complications of uterine myoma morcellation*, 45 AUST. N.Z. J. OBSTET. GYNECOL. 248 (2005).

b. Rekha et al.'s case report involved a 40-year-old woman who underwent total laparoscopic hysterectomy for presumed benign uterine fibroids died several months after her initial surgery from dissemination of occult leiomyosarcoma. *Id.*

c. According to the authors, the patient's "malignant component was missed at the time of initial histological evaluation due to evaluation of limited tissue." *Id.*

d. Published in 2011, Ian S. Hagemann et al. also discuss the difficulty of analyzing morcellated specimens in their case series "Risk of Occult Malignancy in Morcellated Hysterectomy: A Case Series" that appeared in the International Journal of Gynecological Pathology. Ian S. Hagemann et al., *Risk of Occult Malignancy in Morcellated Hysterectomy: A Case Series*, 30 INT. J. GYNECOL. CANCER 478, 478-83 (2011).

e. In their article, Hagemann et al. explained that "[t]hese [morcellated] specimens are examined in the surgical pathology laboratory where, by their fragmented and unoriented nature, they present a special challenge to the pathologist. There is little evidence to guide the pathologic examination of these specimens." *Id.* at 481-82.

82. As set forth herein, over the years numerous journal articles and published studies have examined Laparoscopic Power Morcellators' potential to spread and worsen a women's occult cancer.

83. This evidence should have placed Defendants on notice that their Laparoscopic Power Morcellators were associated with and/or could cause the dissemination and upstaging or worsening of a women's occult cancer.

84. Yet, as designed and marketed, the Laparoscopic Power Morcellator used on Plaintiff-Decedent during her 2011 surgery was unsafe for its intended purpose and defective in design in that it subjected the Plaintiff-Decedent to the avoidable risks of harm, including, *inter alia*: (a) dissemination and implantation of occult malignant or cancerous tissue; (b) increasing Plaintiff-Decedent's probability to develop metastatic cancer; (c) upstaging or worsening a patient's occult malignancy; (d) causing earlier recurrence of cancer; and (e) significantly lowering the Plaintiff-Decedent's likelihood of long-term survival.

85. Knowing their Laparoscopic Power Morcellators had the potential to spread and upstage or worsen a woman's occult cancer, Defendants should have designed, marketed and sold their Laparoscopic Power Morcellators with a containment bag or system specifically designed to minimize or prevent the risk of disseminating cancerous tissue.

86. On information and belief, said containment bag or system should have been designed to accommodate and withstand the morcellator blade and the large tissues that are often encountered in gynecologic surgery.

87. Defendants' failure to design, develop, manufacture, market and sell the Laparoscopic Power Morcellator used in Plaintiff-Decedent's surgery with a containment bag or system to minimize or prevent the risk of disseminating cancerous tissue was

negligent and fell below the standard of care expected of a reasonable medical device manufacturer.

88. Additionally, at the time of Plaintiff-Decedent's surgery, numerous other treatment options for fibroids were available, which had more established safety profiles and considerably lower risk profiles than Laparoscopic Power Morcellators including, but not limited to, total abdominal hysterectomies ("TAH"), minimally-invasive hysterectomies and myomectomies, including those using manual morcellation, and embolization and ablation treatments.

89. Accordingly, for this and the other reasons set forth here and below, the Laparoscopic Power Morcellator used in Plaintiff-Decedent's surgery was defective in design.

90. As set forth here and below, the defective design of the Laparoscopic Power Morcellator used on Plaintiff-Decedent during her 2011 surgery, was the proximate cause of Plaintiff-Decedent's injuries and death.

D. The Laparoscopic Power Morcellator Used in Plaintiff-Decedent's Surgery Contained an Inadequate Warning.

91. The Defendants failed to provide a reasonable sufficient or adequate warning about the true risks of disseminating and upstaging occult cancer from the use of their Laparoscopic Power Morcellators.

92. In 1995, the first Power Morcellator reached the market with an indication for gynecologic laparoscopic procedures based on literature involving the device's use in merely 11 patients.

93. Power Morcellators are Class II medical devices.

94. Class II devices are regulated by the Food and Drug Administration Center for Medical Devices and Radiological Health.

95. Such devices are required to undergo a "510(k)" process prior to being distributed, which simply requires the manufacturer to notify the Food and Drug Administration ("FDA") under section 510(k) of the Medical Device Amendments to the Food, Drug, and Cosmetics Act of 1938 ("MDA"), of its intent to market a device at least ninety (90) days prior to the device's introduction on the market, and to explain the device's "substantial equivalence" to a pre-MDA predicate device.

96. Each time the Defendants sought to market a new Laparoscopic Power Morcellator device they did so without submitting premarket approval-testing (required under FDA regulations for Class III devices) and merely based on the Defendants' assertions that the subject device was "substantially similar" to another legally marketed device.

97. Based on the Defendants' assertions that their device was "substantially similar" to a marketed device, the FDA cleared the device for sale in the United States.

98. FDA approval or clearance actions do not guarantee that a product will be found to be compliant or safe and effective for its intended uses for all times and for all purposes.

99. After the FDA cleared the Laparoscopic Power Morcellator used in Plaintiff-Decedent's surgery for sale in the U.S., the Defendants were under an obligation to ensure the quality and safety of their marketed product.

100. Defendants have an ongoing duty of medical device surveillance and vigilance and were under a continuing duty to inform surgeons, regulatory agencies, and the public of new safety and efficacy information they learn, or should have learned, about their marketed devices once that information becomes available to Defendants.

101. According to the FDA guidance to medical device manufactures, an appropriate Warning should be included if there is reasonable evidence of an association of a serious hazard with the use of the device. A causal relationship need not have been proved. *See* Device Labeling Guidance #G91-1 - blue book memo, March 8, 1991.

102. However, Defendants ignored mounting evidence about the cancer risk, and exposed Plaintiff-Decedent to an avoidable risk of harm by failing to disclose:

a. The difficulty of effectively diagnosing cancer prior to (or during) surgery with available diagnostic tools;

b. The actual prevalence of undiagnosed uterine sarcomas in women undergoing morcellation;

c. The actual rates at which Laparoscopic Power Morcellators disseminated and/or upstaged occult cancer;

d. Laparoscopic Power Morcellators are associated with worse long-term medical outcomes than other fibroid treatments because of the risk of occult cancer being spread and implanted by the use of the device; and

e. If cancer is discovered after morcellation, staging and pathological diagnosis could be impeded, thus yielding worse prognosis and outcomes for the patient, including Plaintiff-Decedent.

103. On information and belief, at the time of Plaintiff-Decedent's 2011 surgery, the Defendants' instructions for use that accompanied their Laparoscopic Power Morcellators contained a "**CAUTION" which merely provided:** "[a] tissue extraction bag is recommended for the morcellation of malignant tissue or tissue suspected of being malignant and for tissue that the physician considers to be potentially harmful when disseminated in a body cavity."

104. The device used on Plaintiff-Decedent, however, failed to contain a Warning or an adequate warning regarding the potential of the Laparoscopic Power Morcellator to spread occult cancer.

105. Likewise, the Laparoscopic Power Morcellator used on Plaintiff-Decedent failed to contain a recommendation to use a tissue extraction bag to minimize the risk of spreading occult cancer.

106. Defendants' statements were insufficient and negligent in that they wrongly conveyed that detection of cancerous tissue prior to morcellation is feasible and likely.

107. Evidence available to the Defendants, however, showed that the risk of undetected leiomyosarcoma was one in 140 and, therefore, detection of leiomyosarcoma prior to surgery is not feasible or likely.

108. Thus, Defendants' statement about use of a tissue extraction bag only when cancer is detected and suspected did not and could not eliminate the risk of dissemination of uterine cancer in those cases of hidden cancer.

109. Defendants' statement, in fact, ensured harm to patients, including Plaintiff-Decedent, by providing a false and inadequate warning.

110. Neither the 510(k) submissions, nor Defendants' inadequate warnings concerning their Laparoscopic Power Morcellators, adequately instructed Plaintiff-Decedent or her surgeon that an appropriate tissue bag to contain shredded tissue fragments should be used to prevent or minimize the risk of disseminating and worsening occult uterine cancer.

111. Defendants' also failed to adequately warn of the risks associated with their Laparoscopic Power Morcellators including, but not limited to:

a. The failure to adequately warn because any Warnings given were not commensurate with the risks involved;

b. The failure to adequately warn because the Warnings contained no information about the risk of disseminating and upstaging a patient's occult cancer;

c. The failure to timely include a Black Box Warning regarding the risks of disseminating and upstaging a patient's occult cancer; and

d. The failure to timely include a Contraindication regarding the risks of disseminating and upstaging a patient's occult or unknown cancer.

112. Defendants' failure to timely or appropriately warn of the foregoing risks prevented Plaintiff-Decedent and her surgeon from fully or correctly evaluating the risks and benefits of undergoing surgery with the Defendants' Laparoscopic Power Morcellators.

113. Because of Defendants failure to adequately warn Plaintiff-Decedent and her surgeons of the risks associated with morcellator use and the device's propensity to

disseminate and upstage or worsen cancer, Plaintiff-Decedent was caused severe and permanent injures, and death.

E. FDA Action and the "World Wide Withdrawal" of Johnson & Johnson Laparoscopic Power Morcellators in 2014

114. On April 17, 2014, the FDA released a Safety Communication Notice and Quantitative Assessment to inform health care providers and the public that "based on currently available information, ***the FDA discourages the use of laparoscopic power morcellation during hysterectomy or myomectomy for the treatment of women with uterine fibroids***." 4/17/2014 FDA Safety Communication (emphasis added).

115. The FDA further warned the medical community that:

> Importantly, based on an FDA analysis of currently available data, it is estimated that ***1 in 350 women undergoing hysterectomy or myomectomy for the treatment of fibroids is found to have an unsuspected uterine sarcoma***, a type of uterine cancer that includes leiomyosarcoma. If laparoscopic power morcellation is performed in women with unsuspected uterine sarcoma, there is a risk that the procedure will spread the cancerous tissue within the abdomen and pelvis, significantly worsening the patient's likelihood of long-term survival.

Id. (emphasis added).

116. Significantly, in the FDA's "Quantitative Assessment of the Prevalence of Unsuspected Uterine Sarcoma in Women Undergoing Treatment of Uterine Fibroids," the FDA listed the studies it relied on in reaching its conclusions on the prevalence of unsuspected uterine sarcoma and uterine leiomyosarcoma.

117. The studies cited by the FDA were published in prominent medical journals, ranging in publication date from 1980 to 2014. Significantly, eight (8) of the eighteen (18) studies cited by the FDA in Table 1, were available to Defendants prior to the date on which Plaintiff-Decedent underwent surgery.

118. Shortly after the FDA released its prevalence data, the Journal of the American Medical Association published Wright et al.'s findings on how many women might have undetected cancer that a Laparoscopic Power Morcellator could unintentionally spread.

119. Wright et al. examined the Perspective Insurance Database, which collects data from over 500 hospitals, to identify women who had a minimally invasive hysterectomy from 2006-2012 with the use of a power morcellator being captured by charge codes.

120. Of the 232,882 women who had minimally invasive surgery during the study period, power morcellation was used in 36,470 surgeries (15.7%).

121. Of these, 99 women were identified as having uterine cancer, for a prevalence of 27/10,000 (95% CI, 22-32/10,000), a prevalence that was positively correlated with patient age, and translates into a 1 in 368 risk of occult malignancy, in keeping with the FDA's Quantitative Assessment, which found a 1 in 352 risk of unsuspected uterine sarcoma.

122. In July 2014, FDA convened an Advisory Committee ("AdCom") meeting of the Obstetrics and Gynecological Medical Device Advisory Committee on Laparoscopic Power Morcellators to discuss, among other topics, "whether a 'boxed

warning' related to the risk of cancer spread should be required for laparoscopic power morcellators." *Id.*

123. In preparation for the AdCom meeting, the FDA prepared an Executive Summary, which detailed the results of the FDA's safety review and stated:

> 1. The risk of having an unsuspected sarcoma in the population of women undergoing hysterectomy or myomectomy for presumed fibroids may be as high as approximately 1 in 350 for all types of uterine sarcomas, and 1 in 500 for LMS [leiomyosarcoma] specifically.
>
> 2. Peritoneal dissemination and/or cancer upstaging (to FIGO Stage III or IV) following morcellation of an unsuspected sarcoma may occur in approximately 25-65% of cases.
>
> 3. Patients with unsuspected uterine sarcoma who undergo morcellation may be at significantly higher risk for local (pelvic/abdominal) and overall cancer recurrence compared to those who do not undergo morcellation.
>
> 4. Patients with unsuspected sarcoma who undergo morcellation may have poorer disease-free survival and overall survival compared to patients who do not receive morcellation.

See Food and Drug Administration Executive Summary, prepared for the July 10-11, 2014 meeting of the Obstetrics and Gynecology Devices Advisory Committee, *Laparoscopic Power Morcellation during Uterine Surgery for Fibroids* ("FDA Executive Summary"), p. 23.

124. On July 10 and 11, 2014, FDA's Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee convened the AdCom meeting on Laparoscopic Power Morcellators. The two-day meeting consisted of presentations from FDA scientists, FDA invited speakers, Laparoscopic Power Morcellator manufacturers, and members of the public.

125. Based on the data and literature reviewed, the panel made a number of recommendations on Laparoscopic Power Morcellation labeling, including:

a. Laparoscopic Power Morcellators should not be used in patients with known or suspected malignancy. *See* FDA Brief Summary of the Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee Meeting – July 10-11, 2014 ("FDA AdCom Summary Panel Findings") p. 3.

b. A black boxed warning related to the risk of disseminating unsuspected malignancy during surgeries for presumed benign fibroids would be useful *but not enough* to address the issue alone. *Id*. (emphasis added).

c. The panel also expressed interest in exploring other ways to ensure that patients have the appropriate information related to the risk, including a mandatory patient consent form to be signed by the patient and physician. *Id.*

126. The AdCom panel also found that the patient populations for which the risks of Laparoscopic Power Morcellation may outweigh the benefits were quite limited, noting that several panel members identified peri- or post-menopausal women with symptomatic uterine fibroids. *Id*. at 2-3.

127. Facing mounting negative publicity about its devices spreading cancer, on April 30, 2014, the JOHNSON & JOHNSON Defendants suspended worldwide sale of their Laparoscopic Power Morcellators.

128. In a "Dear Healthcare Provider" letter, JOHNSON & JOHNSON explained:

> Based on this Safety Communication, in order to align with the FDA's recommendation and Ethicon's internal investigations, Ethicon has decided to suspend global commercialization (sales, distribution, and promotion) of its Morcellation Devices until the role of morcellation for patients with symptomatic fibroid disease is further redefined by FDA and the medical community.

129. In that same letter, the JOHNSON & JOHNSON Defendants emphasized that the decision to suspend global commercialization was "not a product removal." *Id*.

130. On July 30, 2014, the JOHNSON & JOHNSON Defendants issued an urgent worldwide withdrawal of the Ethicon Morcellators.

131. The JOHNSON & JOHNSON Defendants continued to defend their Laparoscopic Power Morcellator devices, stating that "Ethicon Morcellation Devices perform as intended and there are patients who can benefit from procedures using laparoscopic power morcellators, but the risk-benefit assessment associated with the use of these devices in hysterectomy and myomectomy procedures for removing fibroids remains uncertain."

132. On November 24, 2014, the FDA issued and updated FDA Safety Communication regarding Laparoscopic Uterine Power Morcellation in Hysterectomy and Myomectomy.

133. According to the Safety Communication, the FDA was issuing an Immediately In Effect (IIE) guidance that asked manufacturers of Laparoscopic Power Morcellators to include two contraindications and a boxed warning in their product

labeling, which warned the medical community against using laparoscopic power morcellators in the majority of women undergoing myomectomy or hysterectomy, and recommends doctors share this information with their patients.

134. The boxed warning informs health care providers and patients that:

> Uterine tissue may contain unsuspected cancer. The use of laparoscopic power morcellators during fibroid surgery may spread cancer and decrease the long-term survival of patients. This information should be shared with patients when considering surgery with the use of these devices.

135. The two contraindications advise of the following:

> Laparoscopic power morcellators are contraindicated (should not be used) for removal of uterine tissue containing suspected fibroids in patients who are: peri- or post-menopausal, or candidates for *en bloc* tissue removal (removing tissue intact) through the vagina or minilaparotomy incision. (These groups of women represent the majority of women with fibroids who undergo hysterectomy and myomectomy.)
>
> Laparoscopic power morcellators are contraindicated (should not be used) in gynecologic surgery in which the tissue to be morcellated is known or suspected to be cancerous.

136. In May of 2015, it was reported by the Wall Street Journal that the Federal Bureau of Investigation began to investigate whether the Defendants violated federal law by failing to report adverse events to the FDA relating to Laparoscopic Tissue Morcellators.

EQUITABLE TOLLING OF APPLICABLE STATUTES OF LIMITATIONS

137. Plaintiffs repeat, reiterate and reallege each and every allegation of this Complaint with the same force and effect as if more fully set forth herein.

138. Plaintiffs assert all applicable state statutory and common law rights and theories related to the tolling or extension of any applicable statute of limitations, including the discovery rule and/or fraudulent concealment.

139. The discovery rule should be applied to toll the running of the statute of limitations until she knew, or through the exercise of reasonable care and diligence should have known, of facts indicating that she had been injured and that her injury was caused by the conduct of another.

140. Despite reasonable care and diligence, Plaintiff-Decedent did not know of facts indicating that she had been injured and that her injury was caused by the conduct of another until on or about May 2, 2014 when Plaintiff-Decedent was told of the results of the pathology review performed by MSKCC.

141. Plaintiff-Decedent never had a discussion with her surgeon regarding the tools used during her 2011 hysterectomy.

142. Plaintiff-Decedent never had a discussion with any treating physician regarding the risks of laparoscopic power morcellator devices.

143. Plaintiff-Decedent had no reason to know a power morcellator was the cause of her injuries as surgeons were regularly performing hysterectomies and myomectomies using laparoscopic power morcellator devices as a surgical option to remove a woman's uterus and/or uterine fibroids.

144. Defendants are estopped from asserting a statute of limitations defense because all Defendants fraudulently concealed from Plaintiffs the truth, quality and nature of Plaintiff-Decedent's injuries and the connection between those injuries and Defendants' tortuous conduct. Defendants, through their affirmative misrepresentations and omissions, actively concealed from Plaintiff-Decedent and her prescribing physicians the true risks associated with their Power Morcellators.

145. Defendants were under a duty to disclose the true character, quality and nature of the risks associated with use of a Power Morcellator in laparoscopic uterine surgeries as this was non-public information over which Defendants had and continue to have exclusive control and because Defendants knew that this information was not available to Plaintiff-Decedent, Plaintiff-Decedent's medical providers and/or to Plaintiff-Decedent's healthcare facilities. In addition, Defendants are estopped from relying on any statute of limitation because of their intentional concealment of these facts.

146. Plaintiffs had no knowledge that Defendants were engaged in the wrongdoing alleged herein and because of the fraudulent acts of concealment of wrongdoing by Defendants, Plaintiffs could not have reasonably discovered the wrongdoing at any time prior.

147. In the alternative, Plaintiffs plead that N.Y. CPLR § 214-c applies to this case as to when Plaintiff-Decedent discovered her injuries or through the exercise of reasonable diligence such injury should have been discovered by Plaintiff-Decedent.

148. Despite the exercise of reasonable diligence, Plaintiff-Decedent did not

discover her injuries until on or about May 2, 2014 when Plaintiff-Decedent was told of the results of the pathology review performed by MSKCC.

149. In the alternative, Plaintiffs plead that Minn. Stat. Ann. §541.33 apply to this case.

150. The personal injury statutes of New York are substantially different from the limitation period of Minnesota and Plaintiffs have not been afforded a fair opportunity to sue upon, or imposes an unfair burden in defending against, the claim, the limitation period of this state applies.

FIRST CAUSE OF ACTION
AS AGAINST ALL DEFENDANTS
(NEGLIGENCE)

151. Plaintiffs repeat, reiterate and reallege each and every allegation of this Complaint with the same force and effect as if more fully set forth herein.

152. Defendants were regularly engaged in the business of designing, researching, developing, testing, manufacturing, packaging, labeling, marketing, promoting, distributing and/or selling medical devices known as Laparoscopic Power Morcellators, for use in gynecological surgery to remove the uterus (hysterectomy) and/or to remove uterine fibroids (myomectomy) in women.

153. Defendants owed a duty to design, research, develop, test, manufacture, package, label, market, promote, distribute, sell and/or supply products, including gynecologic products used for uterine morcellation, in such a way as to avoid harm to

persons upon whom they were used by adequately warning of the hazards and dangers associated with the use of said products.

154. Defendants, acting by and through their authorized divisions, subsidiaries, agents, servants, and employees, were careless, reckless, negligent, grossly negligent and exhibited willful, wanton, outrageous and reckless disregard for human life and safety in manufacturing, designing, labeling, marketing, distributing, supplying and/or selling, and/or placing into the stream of commerce, gynecologic products, including Laparoscopic Power Morcellators used for uterine morcellation, by:

a. failing to design their Laparoscopic Power Morcellators for safe use in fibroid removal surgery;

b. failing to conduct adequate and appropriate testing of their gynecologic products;

c. marketing their Laparoscopic Power Morcellators without first conducting adequate research to determine possible side effects on humans or selectively and misleadingly revealing or analyzing testing and research data;

d. failing to monitor registry data regarding their marketed devices and promptly report any safety concerns that arise through registry study or data;

e. failing to keeping abreast of scientific literature and studies which provided Defendants notice of the risks associated with the use of Laparoscopic Power Morcellators;

f. failing to appropriately respond to their own and others testing of, and information available regarding Laparoscopic Power Morcellators, which indicated such products' potential harm to humans;

g. failing to appropriately monitor the post-market performance, adverse events, and complications reported about their Laparoscopic Power Morcellators and their products' effects on patients;

h. failing to promptly disseminate new safety information and data regarding their products after their Laparoscopic Power Morcellators reached the market;

i. failing to adequately warn of the actual potential of their Laparoscopic Power Morcellators to be harmful to humans;

j. failing to adequately warn of the actual potential for the dissemination and/or upstaging of metastases of cancer when using Laparoscopic Power Morcellators for uterine morcellation;

k. concealing their full knowledge and experience regarding the potential that Laparoscopic Power Morcellators were harmful to humans because there was a substantial risk their products would spread cancer;

l. failing to adequately define the patients populations, if any, for which Laparoscopic Power Morcellator could be safely used;

m. promoting, marketing, advertising and/or selling their Laparoscopic Power Morcellators for use for uterine morcellation given their knowledge and experience of such products' potential harmful effects;

n. failing to timely withdraw products used for uterine morcellation from the market, restrict their uses and adequately warn of such products' potential dangers, given their knowledge of the potential for its harm to humans;

o. failing to fulfill the standard of care required of a reasonably prudent medical device manufacturer;

p. disregarding publicity, government and/or industry studies, information, documentation and recommendations, consumer complaints and reports and/or other information regarding the hazards of uterine morcellation and its potential harm to humans;

q. failing to provide updated information in the form of reports, statistics and outcomes of studies to physicians, hospitals and other healthcare entities concerning the increased likelihood of cancer dissemination when such data became available;

r. promoting the products used for uterine morcellation on websites aimed at creating user and consumer demand;

s. advertising and promoting their products used for uterine morcellation as safe and/or safer than other methods of uterine fibroid removal; and

t. such other acts or omissions constituting negligence and carelessness as may appear during the course of discovery or at the trial of this case.

155. Despite the fact that Defendants knew or should have known that their Laparoscopic Power Morcellators were associated with and/or caused the dissemination and/or upstaging of unsuspected malignant tissue, Defendants continued to market,

manufacture, distribute, and/or make available their Laparoscopic Power Morcellators to patients through their surgeons and/or health care facilities, including the Plaintiff-Decedent and her surgeon.

156. Defendants, directly or through their sales staff and/or agents, paid consultants, and/or licensed distributors, among others, made false material representations and/or material omissions through the course of aggressive sales and marketing operations that implemented false and misleading statements by sales representatives, Defendant-sponsored literature, Defendant-sponsored events and conferences, online and/or video marketing, or other promotional material in order to promote and sell their Laparoscopic Power Morcellators while omitting material facts regarding said devices' dangerous side effects and adverse events.

157. Defendants knew or should have known that consumers, such as the Plaintiff-Decedent, would foreseeably suffer injury as a result of Defendants' failure to exercise ordinary care, as set forth above.

158. Defendants' negligence (and/or recklessness) was the cause of and substantial factor in bringing about Plaintiff-Decedent's injuries, harm and economic loss which she suffered and continued to suffer until her death.

159. Defendants' acted in conscious disregard of, or indifference to, the high degree of risk of physical harm to women undergoing surgery with their Laparoscopic Power Morcellators, including Plaintiff-Decedent herein, of which Defendants knew or has reason to know, giving rise to punitive damages.

160. Defendants knew or should have known of the danger associated with the use of their Laparoscopic Power Morcellator as well as the defective nature of said products, but continued to design, manufacture, sell, distribute, market, promote and/or supply their Laparoscopic Power Morcellators so as to maximize sales and profits at the expense of the public health and safety.

161. Defendants have done and are doing business in New York and Minnesota.

162. Defendants carried on solicitation or service activities in New York and Minnesota.

163. The Defendants' Laparoscopic Power Morcellators were used within New York and Minnesota in the ordinary course of trade.

164. Defendants derived and derive substantial revenue from interstate commerce.

165. As a result of Defendants' negligence and/or recklessness, Plaintiff-Decedent was caused to suffer serious and dangerous side effects including the dissemination and/or upstaging of unsuspected malignant tissue resulting in death, physical pain and mental anguish, diminished enjoyment of life, any and all life complications caused by Plaintiff-Decedent's cancer prior to death.

166. By reason of the foregoing, Plaintiffs demand judgment against each Defendant, individually, jointly and severally for compensatory damages and punitive damages, together with interest, costs of suit, attorneys' fees and all such other and further relief as this Court deems proper.

SECOND CAUSE OF ACTION
AS AGAINST ALL DEFENDANTS
(STRICT PRODUCTS LIABILITY - DEFECTIVE DESIGN)

167. Plaintiffs repeat, reiterate and reallege each and every allegation of this Complaint with the same force and effect as if more fully set forth herein.

168. Defendants' Laparoscopic Power Morcellators were expected to, and did, reach the intended consumers, handlers, and persons coming into contact with the product without substantial change in the condition in which they were designed, produced, manufactured, labeled, sold, distributed, and/or marketed by Defendants.

169. Defendants' Laparoscopic Power Morcellators were defective in design or formulation in that they were not reasonably fit, suitable or safe for their intended purpose and/or their foreseeable risks exceed the benefits associated with their design.

170. Defendants' Laparoscopic Power Morcellators were defective in design or formulation in that they lacked efficacy, posed a greater likelihood of injury and were more dangerous than other available surgical treatment options indicated for the same conditions and uses, including those discussed above.

171. Defendants' Power Morcellators were defective in design or formulation in that when they left the hands of the manufacturers and/or suppliers, the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design, including those discussed above, which had more established safety profiles and a considerably lower risks, or by the provision of reasonable instructions or warnings.

172. Defendants' Laparoscopic Power Morcellators, as designed, posed a substantial and avoidable likelihood of harm and it was feasible to design said products in a safer manner.

173. Defendants' Laparoscopic Power Morcellators were defective in design or formulation in that the dangers associated with their use were unknowable and unacceptable to the average or ordinary consumer.

174. Defendants' Laparoscopic Power Morcellators failed to comply with state and federal standards when sold.

175. At the time of Plaintiff-Decedent's surgery, the Laparoscopic Power Morcellator was being used for its advertised and intended purpose, and in the manner Defendants intended.

176. As a foreseeable, direct, and proximate result of the aforementioned wrongful acts and omissions of Defendants, Plaintiffs were caused to suffer from the aforementioned injuries and damages.

177. Due to the aforesaid condition of the Laparoscopic Power Morcellator used on Plaintiff-Decedent during her surgery, Defendants are strictly liable to Plaintiffs.

178. By reason of the foregoing, Plaintiffs demand judgment against each Defendant, individually, jointly and severally for compensatory damages as well as for punitive damages, attorneys' fees and all such other and further relief as this Court deems proper.

THIRD CAUSE OF ACTION
AS AGAINST ALL DEFENDANTS
(STRICT PRODUCTS LIABILITY – FAILURE TO WARN)

179. Plaintiffs repeat, reiterate and reallege each and every allegation of this Complaint with the same force and effect as if more fully set forth herein.

180. Defendants were under an ongoing duty to keep abreast of medically known or knowable information related to their products and to advise clinicians of these risks in a timely manner to ensure the safe use of their product.

181. Defendants failed to adequately warn health care professionals and the public, including Plaintiff-Decedent and her surgeon, of the following risks associated with the use of their Laparoscopic Power Morcellators, all of which were known or scientifically knowable to Defendants prior to the date on which the Plaintiff-Decedent underwent surgery in 2011, including, but not limited to:

a. the risk of aggressively disseminating unsuspected malignant tissue beyond the uterus;

b. the device's risk of upstaging a patient's undetected or occult cancer;

c. failing to provide accurate warnings regarding the inadequacy of pre-operative screening for the presence of unsuspected malignant uterine tissue in women;

d. failing to provide accurate rates of the prevalence of unsuspected malignant tissue in women undergoing uterine morcellation; and

e. failing to advise doctors to carefully monitor patients following Laparoscopic Power Morcellator surgery to evaluate for the presence of

uterine cancer at an earlier date and to allow for appropriate treatment in the event of such a finding.

182. Defendants' failure to adequately warn Plaintiff-Decedent and her surgeon of the risks associated with Laparoscopic Power Morcellators prevented warn Plaintiff-Decedent and her surgeon from correctly and fully evaluating the risks and benefits of undergoing surgery with the Defendants' devices.

183. Defendants also knew or should have known of the risks associated with the use of specimen containment bags that were not designed for use with a Laparoscopic Power Morcellator, including their potential to perforate or tear during laparoscopic surgery, thereby, creating a risk of tumor spillage and site seeding. *See* e.g. Yi Cai, et al., *Electrical Prostate Morcellator: An Alternative to Manual Morcellation for Laparoscopic Nephrectomy Specimens? An In Vitro Study*, 61 ADULT UROLOGY 1113, 1113 (2003) (finding a 90% perforation rate with mechanical morcellation without direct visualization).

184. Defendants failed to timely include a Black Box Warning regarding the risks of dissemination of occult malignancy and the upstaging of a patient's occult cancer.

185. Defendants failed to timely include a Contraindication that Power Morcellators should not be used in women with tissue of unsuspected, occult, or unknown malignancy.

186. Had Defendants timely and adequately warned of the risks of the Laparoscopic Power Morcellator used during Plaintiff-Decedent's surgery, such warnings

would have been heeded by Plaintiff-Decedent's surgeon, in that Plaintiff-Decedent's surgeon would have changed the manner in which he prescribed or selected the Laparoscopic Power Morcellator for Plaintiff-Decedent's surgery, including but not limited to, communicating the risks to Plaintiff-Decedent prior to surgery, not using the Laparoscopic Power Morcellator, and/or selecting an alternative and safer treatment option for Plaintiff-Decedent.

187. If Plaintiff-Decedent had been adequately warned of the life-threatening risks of the use of the Laparoscopic Power Morcellator, as stated herein, she would have chosen an alternative treatment, one that did not carry the avoidable risks of disseminating and/or upstaging occult cancer and, therefore, would have avoided the injuries described herein.

188. Defendants' failure to adequately warn about the risk of their Laparoscopic Power Morcellators was a substantial and contributing factor in causing Plaintiff-Decedent's injuries and death.

189. As a foreseeable, direct, and proximate result of the aforementioned wrongful acts and omissions of Defendants, Plaintiff-Decedent was caused to suffer from the aforementioned injuries and damages.

190. By reason of the foregoing, Plaintiffs demand judgment against each Defendant, individually, jointly and severally for compensatory damages and punitive damages, together with interest, costs of suit, attorneys' fees and all such other and further relief as this Court deems proper.

FOURTH CAUSE OF ACTION AS AGAINST ALL DEFENDANTS (BREACH OF EXPRESS WARRANTIES)

191. Plaintiffs repeat, reiterate and reallege each and every allegation of this Complaint with the same force and effect as if more fully set forth herein.

192. Defendants expressly warranted through their labeling, advertising, marketing materials, detail persons, seminar presentations, publications, notice letters, and regulatory submissions that their Laparoscopic Power Morcellators were safe, and withheld and concealed information from Plaintiff-Decedent and her surgeon about the substantial risks of serious injury and/or death associated with using the products used for uterine morcellation.

193. Defendants expressly warranted that their Laparoscopic Power Morcellators were safe for their intended use and as otherwise described in this complaint.

194. The Laparoscopic Power Morcellator used on Plaintiff-Decedent during her surgery did not conform to these express representations, including, but not limited to, the representation that it was well accepted in patient studies, the representation that it was safe for use, the representation that it did not have high and/or unacceptable levels of life-threatening side effects, and that it would improve or maintain health, and potentially prolong life.

195. Defendants represented that the products used for uterine morcellation were safer and more efficacious than other alternative surgical approaches and techniques.

196. Defendants further concealed information, regarding the true efficacy of said products.

197. Defendants' Laparoscopic Power Morcellators failed to conform to the foregoing express representations because their devices were not safe or effective, could produce serious side effects, including among other things disseminating cancerous tissue beyond the uterus and/or upstaging or worsening cancer, degrading Plaintiff-Decedent's health, and causing her death.

198. Defendants made these material representations, which also included omissions of material fact, to the medical and healthcare community at large, the general public, to Plaintiff-Decedent's medical or healthcare provider(s), and/or to Plaintiff-Decedent, with the intent to induce medical and healthcare providers and patients to dispense, provide, prescribe, accept, and/or purchase their Laparoscopic Power Morcellators.

199. Defendants made false material representations and/or material omissions through the course of an aggressive sales and marketing operation that implemented false and misleading statements by sales representatives, Defendant-sponsored literature, and/or Defendant-sponsored promotional functions in order to promote and sell their Laparoscopic Power Morcellators while omitting material facts regarding said devices' dangerous side effects and adverse events.

200. The express warranties represented by the Defendants were a part of the basis for Plaintiff-Decedent and her surgeon's consent to permit the use of the Laparoscopic Power Morcellator on Plaintiff-Decedent during her 2011 uterine surgery.

201. Plaintiff-Decedent and her surgeon relied on said express warranties in deciding to use the Laparoscopic Power Morcellator as a treatment option.

202. At the time of the making of the express warranties, the Defendants had knowledge of the purpose for which their Laparoscopic Power Morcellators were to be used, and expressly warranted the same to be in all respects safe, effective and proper for such purpose.

203. As a result of the foregoing breach of express warranty, Plaintiff-Decedent was caused to suffer serious and dangerous side effects including the dissemination and/or upstaging of unsuspected malignant tissue resulting in death, physical pain and mental anguish, diminished enjoyment of life, any and all life complications caused by Plaintiff-Decedent's cancer prior to death.

204. By reason of the foregoing, Plaintiff-Decedent has died.

205. By reason of the foregoing, Plaintiffs demand judgment against each Defendant, individually, jointly and severally for compensatory damages in a sum that exceeds the jurisdictional limits of all lower courts that might otherwise have jurisdiction, and punitive damages, together with interest, costs of suit, attorneys' fees and all such other and further relief as this Court deems proper.

FIFTH CAUSE OF ACTION
AS AGAINST ALL DEFENDANTS
(BREACH OF IMPLIED WARRANTY FOR A PARTICULAR PURPOSE)

206. Plaintiffs repeat, reiterate and reallege each and every allegation of this Complaint with the same force and effect as if more fully set forth herein.

207. The Defendants impliedly represented and warranted to the users of their Laparoscopic Power Morcellators and patients undergoing surgery with their

Laparoscopic Power Morcellators that said devices was safe and fit for the particular purpose for which said products were to be used, namely for the safe removal of uterine tissue and uterine fibroids.

208. These aforementioned representations and warranties were false, misleading, and inaccurate in that Defendants' Laparoscopic Power Morcellators were unsafe, degraded Plaintiff-Decedent's health and caused her death.

209. Plaintiff-Decedent relied on the implied warranty of fitness for a particular use and purpose.

210. Plaintiff-Decedent and her surgeon reasonably relied upon the skill and judgment of Defendants as to whether the Defendants' Power Morcellator was safe and fit for its intended use (hysterectomies and myomectomies, among other indications).

211. Defendants' Laparoscopic Power Morcellators were placed into the stream of commerce by the Defendants in a defective, unsafe, and inherently dangerous condition and the products and materials were expected to and did reach users, handlers, and persons coming into contact with said products without substantial change in the condition in which they were sold.

212. Defendants breached the aforesaid implied warranty, as their Laparoscopic Power Morcellators, including the Laparoscopic Power Morcellator used on Plaintiff-Decedent, were not reasonably fit for their intended purposes and uses.

213. As a result of the foregoing breach of implied warranty, Plaintiff-Decedent was caused to suffer serious and dangerous side effects including the dissemination and/or upstaging of unsuspected malignant tissue resulting in death, physical pain and

mental anguish, diminished enjoyment of life, any and all life complications caused by Plaintiff-Decedent's cancer prior to death.

214. By reason of the foregoing, Plaintiffs demand judgment against each Defendant, individually, jointly and severally for compensatory damages in a sum that exceeds the jurisdictional limits of all lower courts that might otherwise have jurisdiction and punitive damages, together with interest, costs of suit, attorneys' fees and all such other and further relief as this Court deems proper.

SIXTH CAUSE OF ACTION AS
AS AGAINST ALL DEFENDANTS
(BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY)

215. Plaintiffs repeat, reiterate and reallege each and every allegation of this Complaint with the same force and effect as if more fully set forth herein.

216. Defendants manufactured, compounded, portrayed, distributed, recommended, merchandized, advertised, promoted and sold their Laparoscopic Power Morcellators for the purpose of removing uterine tissue.

217. Defendants knew and promoted the use of their Laparoscopic Power Morcellators for the use for which said device was to be used on Plaintiff-Decedent, namely treating uterine fibroids, improving health, maintaining health, and potentially prolonging life.

218. Defendants impliedly warranted to Plaintiff-Decedent and her surgeon that their Laparoscopic Power Morcellators were of merchantable quality for the purposes for which they were to be used.

219. These aforementioned representations and warranties were false, misleading, and inaccurate in that the Power Morcellator used on Plaintiff-Decedent was unsafe, degraded Plaintiff-Decedent's health and shortened her life expectancy.

220. Plaintiff-Decedent and her surgeon reasonably relied on the skill, expertise and judgment of the Defendants and their representations as to the fact that the Laparoscopic Power Morcellator selected for and used on Plaintiff-Decedent was of merchantable quality.

221. Said Laparoscopic Power Morcellators were not of merchantable quality, in that said devices had dangerous and life threatening side effects and; thus, were not fit for the ordinary purpose for which they was intended.

222. As a direct and proximate result of the foregoing, Plaintiff-Decedent was caused bodily injury, pain and suffering, and economic loss resulting in death.

223. By reason of the foregoing, Plaintiffs demand judgment against each Defendant, individually, jointly and severally for compensatory damages in a sum that exceeds the jurisdictional limits of all lower courts that might otherwise have jurisdiction, and punitive damages, together with interest, costs of suit, attorneys' fees and all such other and further relief as this Court deems proper.

SEVENTH CAUSE OF ACTION
AS AGAINST ALL DEFENDANTS
(WRONGFUL DEATH)

224. Plaintiffs repeat, reiterate, and reallege each and every allegation of this Complaint with the same force and effect as if more fully set forth herein.

225. Plaintiffs bring this Wrongful Death action on behalf of the beneficiaries of Plaintiff-Decedent's estate pursuant to N.Y. E.P.T.L. § 5-4.1, *et seq*.

226. As a result of the aforesaid, and due to the use of a Laparoscopic Power Morcellator during her 2011 surgery, Plaintiff-Decedent passed away on December 3, 2014.

227. Plaintiffs claim damages for grief, mental anguish, and suffering endured by Plaintiff-Decedent's beneficiaries.

228. Plaintiffs also claim damages for loss of the financial support and economic value Plaintiff-Decedent's life expectancy would have provided to her beneficiaries during her lifetime, including, but not limited to earnings, maintenance, support, inheritance and other similar losses recognized under N.Y. E.P.T.L. § 5-4.1, *et seq*. that they would have received from her for the rest of her natural life.

229. Plaintiffs claim damages for all pecuniary losses for expenses suffered by reason of the death of Plaintiff-Decedent, including, but not limited to medical, hospital, funeral and burial expenses and expenses of estate administration and other expenses recoverable under N.Y. E.P.T.L. § 5-4.1, *et seq*.

230. Plaintiffs claim damages for all pecuniary losses suffered by Plaintiff-Decedent's beneficiaries.

231. By reason of the foregoing, Plaintiff-Spouse ISREAL ARAMA, as the lawful spouse of Plaintiff-Decedent, pursuant to N.Y. E.P.T.L. § 5-4.1, *et seq*. claims damages for her past and future loss of consortium, services, society, support, guidance, tutelage, comfort and other similar losses.

EIGHTH CAUSE OF ACTION
AS AGAINST ALL DEFENDANTS
(SURVIVORSHIP ACTION)

232. Plaintiffs repeat, reiterate, and reallege each and every allegation of this Complaint with the same force and effect as if more fully set forth herein.

233. Plaintiff-Spouse, ISREAL ARAMA, is the Executor of the Estate of ESTHER ARAMA, the statutory heir of Plaintiff-Decedent ESTHER ARAMA, and brings herein this survival claim.

234. By reason of the foregoing and, as a direct and proximate result of Defendants' conduct outlined above, Plaintiff-Decedent suffered bodily injury, severe physical pain and mental anguish and suffering, loss of capacity of the enjoyment of life, shortened life expectancy, and expenses of hospitalization, medical and nursing care and treatment, monitoring, and other economic damages prior to Plaintiff-Decedent's death.

235. By reason of the foregoing, Plaintiff-Spouse ISRAEL ARAMA, on behalf of the Plaintiff-Decedent's intestate heir, seeks damages compensable against Defendants.

236. By reason of the foregoing, Plaintiff-Spouse ISRAEL ARAMA, in his own right as successor in interest, seeks damages compensable against Defendants.

NINTH CAUSE OF ACTION AS
AGAINST ALL DEFENDANTS
(LOSS OF CONSORTIUM)

237. Plaintiffs repeat, reiterate and reallege each and every allegation of this Complaint with the same force and effect as if more fully set forth herein

238. Up until Plaintiff-Decedent's death, Plaintiffs were legally married, and as such, were entitled to the comfort, enjoyment, society, and services of one another.

239. As a direct and proximate result of the foregoing, Plaintiff-Spouse was deprived of the comfort and enjoyment of the services and society of his spouse, and suffered economic loss during the time period of Plaintiff-Decedent's injury up until her death.

240. Plaintiffs seek compensatory and punitive damages from the Defendant as alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against the Defendants on each of the above-referenced claims and Causes of Action and as follows:

(1) Awarding compensatory damages to Plaintiffs for past and future damages including, but not limited to, pain and suffering for severe and permanent personal injuries sustained by Plaintiff-Decedent, past health care costs, past loss of earning capacity, according to proof, together with interest and costs as provided by law;

(2) Awarding compensatory damages to Plaintiff-Spouse for past damages for loss of consortium, according to proof;

(3) Under Minnesota law, punitive damages if such damages are allowed by the Court pursuant to a motion under Minn. Stat. § 549.191;

(4) Awarding Plaintiffs' attorney's fees;

(5) Awarding Plaintiffs the costs of these proceedings; and

(6) Such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury as to all issues.

Dated this 1st day of December, 2015.

Respectfully Submitted,

/s/ Megan J. McKenzie
Megan J. McKenzie, Esq. (MN Bar # 388081)
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Attorneys for Plaintiff ISRAEL ARAMA, Individually and as Executor of the Estate of ESTHER ARAMA

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

Israel Arama, Individually and as Executor of the Estate of Esther Arama, Deceased

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Megan McKenzie
Robins Kaplan, LLP
800 La Salle Ave., Ste. 2800, Minneapolis, MN 55402

DEFENDANTS

Ethicon, Inc.; Ethicon Endo-Surgery, Inc.; Johnson & Johnson Services; Johnson & Johnson; Vention Medical, Inc. (f/k/a The Medtech Group, Inc.); Vention Medical Acquisition Co.; Vention Medical Holdings, Inc.; et al.

County of Residence of First Listed Defendant Somerset County
(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

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

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

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

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

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 USC Section 1332

Brief description of cause:
Products liability re: laparoscopic power morcellator

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 Kathryn H. Vratil DOCKET NUMBER 15-md-2652

DATE 12/01/2015

SIGNATURE OF ATTORNEY OF RECORD s/Megan McKenzie

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the six boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.