

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS**

MATTHEW HUFF)	
)	
VS.)	CIVIL ACTION NO. <u>3:16-cv-368</u>
)	
ETHICON, INC.)	JURY TRIAL REQUESTED

PLAINTIFF'S ORIGINAL COMPLAINT

TO THE HONORABLE COURT:

This is a negligence, strict liability, and breach of warranty action arising out of the serious personal injuries of Matthew Huff as a result of the Ethicon Physiomes® Flexible Composite Mesh tested, designed, manufactured, and marketed by Ethicon, Inc.

**I.
Parties**

1. Parties to this suit are:

Plaintiff: Matthew Huff, a natural person who resides in West Frankfort, Illinois.

Defendant: Ethicon, Inc., is a foreign corporation licensed to do business in the State of Illinois who may be served by serving its Registered Agent for Service, C. T. Corporation System, 208 So LaSalle St., Suite 814, Chicago, Illinois 60604.

**II.
Venue**

2. Venue of this suit is proper and maintainable in the Southern District of Illinois in that Plaintiff's causes of action accrued, at least in part, in the Southern District of Illinois. Venue of this suit is proper herein under 28 U.S.C. § 1391 as the Defendant is a resident of the Southern District of Illinois with sufficient contacts to subject it to personal jurisdiction.

III. Jurisdiction

3. Matthew Huff is a resident of the State of Illinois. Defendant Ethicon, Inc. is a New Jersey corporation with its principal place of business in some state other than the State of Illinois, thereby creating a diversity of citizenship between Plaintiff and Defendant. The amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.00. The Court has jurisdiction of this action under 28 U.S.C. § 1332.

IV. Nature of the Action

4. In 2013, Plaintiff Matthew Huff was treated for a hernia of the abdominal wall. The surgeon, Udaya Liyanage, M.D. used Ethicon Physiomesh® Flexible Composite Mesh for the hernia repair. Ethicon Physiomesh® Flexible Composite Mesh was manufactured, designed, tested, and marketed by Defendant Ethicon, Inc. The Ethicon Physiomesh® Flexible Composite Mesh is an implantable tissue-separating mesh designed to be physiologically compatible with the abdominal wall. In July of 2015, Mr. Huff began experiencing severe pain in his abdomen, along with fever, nausea, chills, and redness which developed on the skin of his abdomen. Mr. Huff was hospitalized and found to have an infection in and around the mesh causing two abdominal abscesses, intestinal fistula, and underwent a procedure to debride the two abscesses, and the placement of a V.A.C. Since that time, Plaintiff Matthew Huff has suffered severe and serious problems and complications with two open abdominal wounds which have to be cleaned and packed daily, and continues to suffer various infirmities due to complications caused by the

product, Ethicon Physiomes® Flexible Composite Mesh, that was designed, marketed, tested, and manufactured by Defendant Ethicon, Inc.

Strict Liability

5. Plaintiff Matthew Huff continues to suffer with pain, mental anguish, and other problems associated with the defective Ethicon Physiomes® Flexible Composite Mesh product in question.

6. Plaintiff alleges that the product in question was designed, manufactured, marketed, packaged, labeled, and tested by Defendant Ethicon, Inc.

7. At all times relevant herein, Defendant Ethicon, Inc. was engaged in the business of designing, manufacturing, marketing, packaging, labeling, and testing products such as the Ethicon Physiomes® Flexible Composite Mesh for hernia repair.

8. The product, Ethicon Physiomes® Flexible Composite Mesh, was defective, unreasonably dangerous, and not suitable for implantation in Matthew Huff and others similarly situated and was the producing cause of the injuries and damages to Plaintiff.

9. The mesh at issue was not reasonably tested to determine if it was fit for its intended purpose of implantation into the human body.

10. Plaintiff believes and alleges that the specific mesh in question was unreasonably dangerous in that the benefits of the specific mesh were outweighed by the risks of harm.

11. Plaintiff believes and alleges there were, at the time of the original manufacture and sale of the mesh in question, reasonable economically and technologically alternative

feasible designs which would have afforded users such as and including Plaintiff with the same or greater benefits, while reducing the risk of harm.

12. Plaintiff believes and alleges that the mesh in question did not, at the time of manufacture and sale, comport with Ethicon, Inc.'s own standards and requirements for the product.

13. Plaintiff believes and alleges that the deviation from intended design has made the product unreasonably dangerous.

14. Plaintiff believes and alleges that this defect existed at the time the product left the manufacturer.

15. Plaintiff believes and alleges that the defect caused the product to adhere to Plaintiff's internal organs in such a way that has caused him severe infection and further injuries.

16. Defendant Ethicon, Inc. did not provide foreseeable customers such as and including Plaintiff, his physicians, hospital staff, and/or other members of the medical community with reasonably sufficient technical information about the risks of using the Ethicon mesh in question and was negligent in such conduct which was a proximate cause of Plaintiff's injuries and damages.

Negligence

17. Plaintiff alleges that Defendant Ethicon, Inc. was required to provide the Plaintiff with a reasonably safe product.

18. Plaintiff alleges that Defendant Ethicon, Inc. did not provide Plaintiff with a reasonably safe product, such failure was negligent which was a proximate cause of Plaintiff's

injuries and damages.

19. Plaintiff believes and alleges that Defendant Ethicon, Inc. has caused Plaintiff significant pain and consequences of future surgeries as a result of Defendant not providing Plaintiff with a reasonably safe product.

20. Plaintiff further believes that Defendant Ethicon, Inc. was on notice of the problems with the product due to adverse event reports and complaints that were made to Ethicon, Inc. by users such as physicians and patients after which a reasonably prudent manufacturer would have removed the product from the market prior to the time that Matthew Huff was implanted with the Ethicon Physiomesh® Flexible Composite Mesh.

Breach of Warranties

21. Plaintiff alleges that the surgical mesh in question was negligently manufactured, tested, distributed, and marketed by Defendant Ethicon, Inc. therefore Ethicon, Inc. is liable under a theory of implied warranty in that the Ethicon, Inc. mesh was not reasonably suited for its intended purposes, such as implantation in the human body. The mesh was also unfit for the ordinary purposes for which it was used and the implied warranty of merchantability was breached. Such breach of implied warranties were a proximate cause of Plaintiff's injuries and damages. Plaintiff has provided the required notice for breach of warranties to Defendant Ethicon, Inc.

V. Actual Damages

22. Plaintiff asserts that Defendant Ethicon, Inc.'s acts and/or omissions were a producing cause and/or a proximate cause of Plaintiff's damages.

23. As a direct and proximate cause of the defective mesh in question, and the injuries resulting there from, Plaintiff Matthew Huff would show he has suffered the following damages:

- a. Medical expenses, past and future;
- b. Physical impairment, past and future;
- c. Loss of enjoyment of life, past and future;
- d. Lost wages, past and future;
- e. Loss of wage earning capacity, past and future;
- f. Physical pain and mental anguish, past and future.

**VI.
Punitive Damages**

24. Plaintiff makes claim that Defendant is liable to Plaintiff Matthew Huff for punitive damages for their gross negligence in the manufacture, design, marketing and testing, or lack thereof, for their Ethicon Physiomesh® Flexible Composite Mesh as implanted in Plaintiff Matthew Huff.

**VII.
Jury Demand**

25. Plaintiff demands a jury trial.

**VIII.
Prayer**

26. Plaintiff requests that the Defendant be cited to appear and answer, and that on final trial Plaintiff have:

a. All actual, economic and compensatory damages in an amount in excess of the minimum jurisdictional limits of the Court;

- b. Punitive damages;
- c. Prejudgment and post-judgment interest at the legal rate, costs of court, and
- d. Such other and further relief as Plaintiff may be entitled to receive

Respectfully submitted,

SAM C. MITCHELL AND ASSOCIATES
P. O. Box 280
West Frankfort, IL 62896
618-932-2772 Phone
618-932-3456 Fax

s/Matthew H. Caraway

Matthew H. Caraway
Illinois Bar No. 6298287
mcaraway@scmitchell.com

ATTORNEY FOR PLAINTIFF

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

Matthew Huff

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

(c) Attorneys Matthew H. Caraway
Sam C. Mitchell & Associates
115 East Main Street, P.O. Box 280
West Frankfort, IL 62896

DEFENDANTS

Ethicon, Inc.

County of Residence of First Listed Defendant Somerset, NJ
(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

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

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

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

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

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

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

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

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

VI. CAUSE OF ACTION

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

Brief description of cause:

Product Liability, Mesh, Negligence, Strict Liability, Warranty Action

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

\$75,000+

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

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.

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Illinois

District of
Benton Division

MATTHEW HUFF

Plaintiff

v.

ETHICON, INC.

Defendant

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Civil Action No. 3:16-cv-368

SUMMONS IN A CIVIL ACTION

To: CT Corporation System, Registered Agent
for Ethicon, Inc.
208 S. Lasalle, Suite 814
Chicago, IL 60604

A lawsuit has been filed against you.

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

Mr. Matthew H. Caraway
Sam C. Mitchell & Associates
P.O. Box 280
115 East Main Street
West Frankfort, IL 62896

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

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: