BEFORE THE UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

In re: Ethicon Physiomesh Flexible Composite Hernia Mesh Products Liability Litigation	**)** **)**	**MDL No. 2782** **Oral Argument Requested**

DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR TRANSFER PURSUANT TO 28 U.S.C. § 1407

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INTRODUCTION AND SUMMARY

Plaintiffs seek to centralize a relatively small number of product liability cases involving the PHYSIOMESH™ Flexible Composite Mesh ("PHYSIOMESH") hernia mesh device. Centralization is not warranted because individualized factual inquiries predominate over common issues. Should the Panel determine centralization to be appropriate, for the reasons set forth below the best venue would be the District of New Jersey, or alternatively, the Eastern District of Kentucky or the Northern District of Georgia.

BACKGROUND

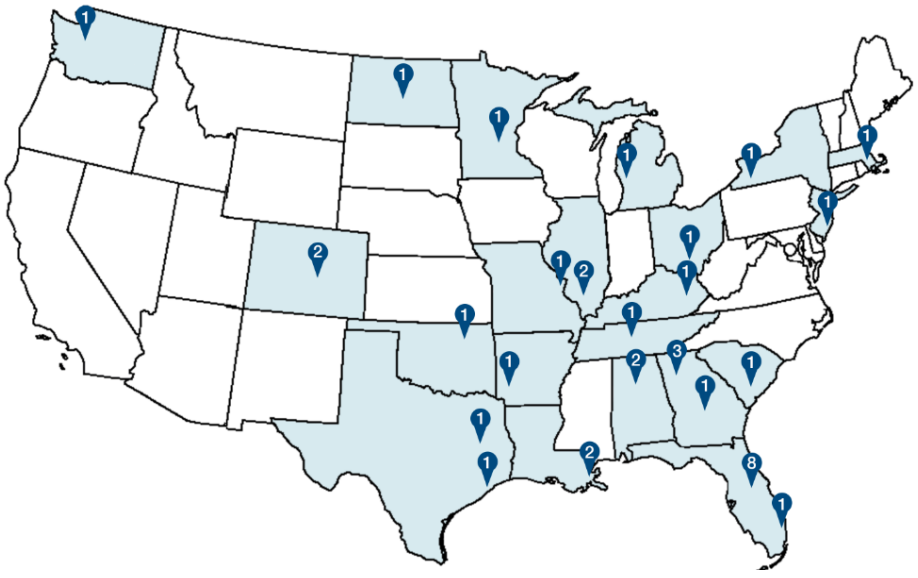
For many years, surgeons have repaired inguinal, ventral, and umbilical hernias (the exit of an organ through the wall of the cavity in which it resides) using devices containing mesh. The mesh in many of these devices is made from sterile, polypropylene-based materials. Depending on the surgeon's repair technique, the mesh is typically placed either under or over the hernia and held in place utilizing one of several methods. The mesh acts as "scaffolding" for new growth of the patient's own tissue, which eventually incorporates the mesh into the surrounding area to provide the needed support.

For more than 50 years, Defendant Ethicon, Inc. ("Ethicon") has manufactured and sold a number of hernia mesh devices, such as PROLENE® Soft Polypropylene Mesh, ULTRAPRO® Partially Absorbable Lightweight Mesh, and PROCEED® Surgical Mesh. About seven years ago, Ethicon launched PHYSIOMESH, a mesh comprised of Prolene fibers that is laminated between MONOCRYL™ (poliglecaprone-25) and PDS™ (polydioxanone) films. The MONOCRYL layers dissolve and allow for a gradual in-growth of tissue into the mesh.

In December 2009, Ethicon submitted to the United States Food and Drug Administration ("FDA") a Section 510(k) premarket notification of its intent to market PHYSIOMESH. By

letter dated April 9, 2010, FDA cleared PHYSIOMESH as a Class II prescription device on the basis that it was at least as safe and effective as—that is, substantially equivalent to—Ethicon's PROCEED Mesh, ULTRAPRO Mesh, and ULTRAPRO Hernia System, all of which had been previously cleared by FDA under the 510(k) process. Thereafter, Ethicon began marketing PHYSIOMESH to surgeons. Ethicon decided to withdraw PHYSIOMESH from the global market in May 2016.

At present, there appear to be 37 cases pending in various federal district courts in which the plaintiffs are alleged to have sustained various complications and/or injuries as a consequence of PHYSIOMESH. In their brief, Plaintiffs claim that "[t]he first-filed case in the Middle District of Florida (*Quinn*, C.A. No. 6:16-CV-01663) was the second constituent action to be filed in this country." (Doc. 1-1, p. 5). In fact, two pending cases were filed in federal court before the *Quinn* complaint was filed in October 2016, including a case pending in the Northern District of Georgia that was filed in December 2015.[1] The following map shows the location, by district, of pending PHYSIOMESH cases in federal court:



[1] *See Lucas*, No. 4:15-cv-249 (N.D. Ga.), which was omitted by Plaintiffs in their schedule. Defendants have provided notice of this case in accordance with JPML Rule 6.2(d).

LEGAL ARGUMENT

I. The Panel should not centralize these actions.

Under 28 U.S.C. § 1407(a), the Panel may transfer civil actions to a single district court if it determines that centralization promotes efficiency and "will be for the convenience of parties and witnesses." The moving party bears the burden of demonstrating that transfer is appropriate. *In re: G.D. Searle & Co. "Cooper 7" IUD Prods. Liab. Litig.*, 483 F. Supp. 1343, 1345 (J.P.M.L. 1980). When considering a motion to transfer, the Panel has made clear that centralization "should be the last solution after considered review of all other options." *In re: Gerber Probiotic Prods. Mktg. & Sales Pracs. Litig.*, 899 F. Supp. 2d 1378, 1379-80 (J.P.M.L. 2012) (emphasis added; citation omitted).

The Panel should exercise caution before establishing an MDL proceeding. Centralization is solely designed to promote efficiency; not to encourage additional filings. As recently noted in *Mentor Corp. ObTape Transobturator Sling Prods. Liab. Litig.*, 2016 WL 4705827, at *1 (M.D. Ga. Sept. 7, 2016), the "phenomenon" of centralization "produces the perverse result that an MDL . . . becomes populated with many nonmeritorious cases that must nevertheless be managed by the transferee judge — cases that likely never would have entered the federal court system without the MDL." *See also Multidistrict Litigation, Trust the Leaders*, Issue 21, p. 6 (Spring 2008) (prominent plaintiffs' mass tort attorney recognizing that "the publicity of an MDL . . . attract[s] other lawsuits" and that "the more lawsuits the defendant faces, . . . the more pressure it will feel to settle"); Mark Herrman, *To MDL or Not to MDL? A Defense Perspective*, 24 Litigation 43, 45 (Summer 1998) ("[A]n MDL proceeding takes on a life of its own," prompting plaintiffs' counsel to "file their less meritorious claims in federal court, hoping that [they] will stay forever submerged beneath the avalanche of pending cases").

An MDL is not appropriate where individual issues predominate over common questions, where the common questions are not sufficiently complex or numerous, where the procedural postures of the cases are at varying stages, and/or where most of the actions are already being handled in a coordinated fashion. *See, e.g.*, *In re: Droplets, Inc. Patent Litig.*, 908 F. Supp. 3d 1377 (J.P.M.L. 2012). These factors counsel against an MDL in this litigation.

A. Individualized factual inquiries are expected to predominate.

The Panel has been disinclined to centralize litigation when there are significant individualized factual questions, such as those relating to liability and damages. *See, e.g., In re: Lipitor Mktg. Sales Prac. & Prods. Liab. Litig.*, 959 F. Supp. 2d 1375, 1376 (J.P.M.L. 2013) (finding centralization unwarranted if "a highly individualized inquiry is necessary to determine whether any particular plaintiff" was injured). Thus, centralization is imprudent when plaintiffs assert claims based on nonspecific injuries or when the potential injury could be caused by something other than the product. *See In re: Qualitest Birth Control Prods. Liab. Litig.*, 38 F. Supp. 3d 1388, 1389 (J.P.M.L. 2014); *In re: Mirena IUS Levonorgestrel-Related Prods. Liab. Litig*, 38 F. Supp. 3d 1380, 1381 (J.P.M.L. 2014).

Here, individualized issues for each plaintiff will eclipse any purported common ones, making an MDL ineffective at narrowing claims and issues. *See In re: Uponor, Inc., F1960 Plumbing Fitting Prods. Liab. Litig.*, 895 F. Supp. 2d 1346, 1348 (J.P.M.L. 2012) (finding that centralization must "produce sufficient clarity or efficiency . . . to outweigh the added inconvenience, confusion and cost" of transfer). Although Plaintiffs may point to hernia recurrence as the common injury that binds these cases together, a closer look at the complaints shows a wide variety of alleged injuries, such as abdominal abscesses and intestinal fistula

(*Huff*), bowel puncture (*Lucas*), erosion and bowel resection (*Brown*), bowel adhesions (*Dailey*), fistula and infection (*Kaylor*), and recurrent inguinal hernia (*Carillo*).[2]

Moreover, the fundamental question of whether a defect in the design and/or warnings of PHYSIOMESH caused each of the plaintiffs' purported injuries requires an individualized determination unsuitable for centralized supervision. Even if these cases shared a common issue as to whether PHYSIOMESH has a defect capable of causing the numerous types of injuries alleged, each case will involve a detailed inquiry into the numerous risk factors for recurrence following any hernia surgery—irrespective of whether PHYSIOMESH was even used—in order to determine the specific medical cause of the patient's alleged injury. For instance, each of the claimed conditions, including recurrence, has many different accepted potential causes (e.g., surgical technique) and different risk factors (e.g., medical history, concomitant injuries, obesity, smoking, age, genetics, size of hernia, infections, and chronic cough) that could independently explain the patient's alleged injuries. The Panel has denied centralization in such instances where there are "differences in the health risks alleged." *In re: Oxyelite Pro & Jack3d Prods. Liab. Litig.*, 11 F. Supp. 3d 1340, 1341 (J.P.M.L. 2014); *see also In re: Ambulatory Pain Pump—Chondrolysis Prods. Liab. Litig.*, 709 F. Supp. 2d 1375, 1378 (J.P.M.L. 2010) (denying centralization of 102 personal injury actions, where "individual issues of causation and liability . . . predominate, and remain likely to overwhelm any efficiencies that might-be-gained by, centralization," where devices had different sizes, volumes, duration, and flow capacities, and plaintiffs had individual medical histories).

Regarding the failure to warn claims in Plaintiffs' complaints, this too will be a highly fact-specific inquiry. PHYSIOMESH's IFUs have differed over time. Further, questions of

[2] *See* Doc 1-21, ¶4 (Huff); Ex. 3 hereto, ¶16 (Lucas); Doc. 1-18, ¶15 (Brown); Doc 5, Ex. 1, ¶16 (Dailey); Doc. 20-4, ¶14 (Kaylor); Doc 1-10, ¶13 (Carillo),

warnings proximate cause will be case-specific because, under the laws of most states, there is no legal causation if the treating physician did not rely on the warnings or already knew the risks, or if the plaintiff cannot show that a different warning would have altered the physician's prescribing decision. *See, e.g.*, *Lewis v. Johnson & Johnson*, 601 F. App'x 205, 208 (4th Cir. 2015); *McElroy v. Eli Lilly & Co.*, 495 F. App'x 166, 168 (2d Cir. 2012). In addition, different statutes of limitations will apply to the plaintiffs' claims.

B. Centralization is unnecessary because the parties may achieve the same efficiencies through cooperation among counsel.

There also is no reason to centralize these cases, because the parties are perfectly capable of working cooperatively to obtain the same efficiencies that centralization is designed to achieve. The Panel has stressed that centralization "should be the last solution after considered review of all other options," including "coordination among the parties and the various transferor courts." *In re: Gerber*, 899 F. Supp. 2d at 1379-80. These cases involve plaintiffs' firms with whom Ethicon has worked in the past, and many plaintiffs are represented by a handful of law firms. Defendants stand ready to coordinate discovery efforts with plaintiffs' counsel. *See In re: Goodman Mfg. Co., HVAC Prods. Liab. Litig.*, 987 F. Supp. 2d 1380, 1380 (J.P.M.L. 2013) (denying transfer where there was overlapping plaintiff's counsel in some of the actions; finding that "alternatives to transfer exist[ed]"). Transferring the existing actions would disrupt the discovery in place.

II. Should the Panel find centralization to be appropriate, the MDL should be assigned to the District of New Jersey, the Eastern District of Kentucky, or the Northern District of Georgia.

Should the Panel determine that centralization is appropriate, the Panel should assign the MDL to one of several experienced MDL judges in the District of New Jersey, or alternatively,

in the Eastern District of Kentucky or the Northern District of Georgia. The Panel should reject Plaintiffs' venue requests of the Middle District of Florida or the Southern District of Illinois.

Although Section 1407 does not specify the factors to be considered in choosing the district that is most convenient, the factors typically considered by the Panel include:

- Where the filed cases are pending, including the situs where the majority are pending;
- Where the first case was filed and the relative degree of progress achieved in actions pending in different districts actions;
- The location of the parties, witnesses, and documents, and the accessibility of the transferee district for parties, witnesses, and counsel; and
- Judicial efficiency and the competing caseloads, existing MDL dockets, and experience of proposed transferee courts

See generally David F. Herr, Multidistrict Litigation Manual § 6:1 (2016).

A. The District of New Jersey would be the best venue for any MDL.

Should the Panel decide to centralize these cases, the District of New Jersey would be the most appropriate forum when considering the Panel's traditional selection criteria.

First, the District of New Jersey has the closest connection to the facts giving rise to these claims. To this end Ethicon's decisions concerning the design, development, labeling, regulatory submission and clearance, and launching of PHYSIOMESH primarily took place in New Jersey and Europe. *See, e.g., In re: Nutramax Cosamin Mktg. & Sales Prac. Litig.*, 988 F. Supp. 2d 1371, 1371-72 & n.2 (J.P.M.L. 2013); *In re: Darvocet*, 780 F. Supp. 2d at 1382.

Second, at least one of the cases filed so far is pending in New Jersey (*Ramey*), which is assigned to Judge Freda L. Wolfson.

Third, this district is the most convenient. Section 1407(a) specifically identifies the "convenience of parties and witnesses" as a relevant consideration in the centralization decision. Defendants are headquartered in New Jersey, and many of the relevant documents and witnesses

are located there. As such, coordinating the actions in the District of New Jersey will facilitate swift and convenient discovery and allow Plaintiffs access to the court and Ethicon's pertinent corporate witnesses in one trip. *See In re: Johnson & Johnson Talcum Powder Prod. Mktg., Sales Practices & Prod. Liab. Litig.*, MDL No. 2738, 2016 WL 5845997, at *2 (J.P.M.L. Oct. 4, 2016) (transferring to this district and noting that "[a]s Johnson & Johnson is headquartered in New Jersey, relevant evidence and witnesses likely are located in the District of New Jersey).[3]

Fourth, the District of New Jersey is equipped to handle a products liability MDL. This district has extensive experience in pharmaceutical and medical device litigation. Moreover, it has one of the fastest median times among all district courts from filing to disposition in civil cases—8 months—and only 6% of the civil cases currently pending in the district are more than three years old. (*See* http://www.uscourts.gov/sites/default/files/data_tables/fcms_na_distprofile1231.2016.pdf (hereinafter "Judicial Caseload Profile)). The Panel has recognized that the District of New Jersey "has the resources and capacity to efficiently handle" an MDL. *In re: Nickelodeon Consumer Privacy Litig.*, 949 F. Supp. 2d 1377, 1377-78 (J.P.M.L. 2013).

Judges Robert B. Kugler, Jerome B. Simandle, and Madeline Cox Arleo are particularly well-suited to preside over a products liability MDL given their experience with such litigation. *See, e.g., In re: Blood Reagents Antitrust Litig.*, 652 F. Supp. 2d 1373, 1374 (J.P.M.L. 2009) ("Centralization in this district permits the Panel to effect the Section 1407 assignment to a judge

[3] *See also In re: Propecia (Finasteride) Prods. Liab. Litig.*, 856 F. Supp. 2d 1334, 1335 (J.P.M.L. 2012) (transferring to a district near pharmaceutical manufacturer defendant's headquarters and "close to where relevant evidence and witnesses are likely located"); *In re: K-Dur Antitrust Litig.*, 176 F. Supp. 2d 1377, 1378 (J.P.M.L. 2001) ("[T]he District of New Jersey stands out as the most appropriate transferee district for this docket" because, among other reasons, defendants' principal place[s] of business [is] located in New Jersey, [and] relevant documents and witnesses will likely be found there").

with experience presiding over multidistrict litigation . . . ."); *In re: Bank of Am. Home Affordable Modif. Program (HAMP) Contract Litig.*, 746 F. Supp. 2d 1359, 1361 (J.P.M.L. 2010) (assigning coordinated proceedings to judge who had "a wealth of prior MDL experience"); *In re: Oil Spill by the Oil Rig "DeepWater Horizon" in the Gulf of Mexico, on April 20, 2010*, 731 F. Supp. 2d 1352, 1355 (J.P.M.L. 2010).

Judge Kugler in the Camden Division presides over *In re: Benicar (Olmesartan) Products Liab. Litig.* (MDL No. 2606). Not currently assigned an MDL, Judge Simandle in the Camden Division has extensive MDL experience, including *In re: Ford Motor Co. Ignition Switch Prods. Liab. Litig.* (MDL No. 1112), and *In re: Caterpillar, Inc., C13 & C15 Engine Prods. Liab. Litig.* (MDL No. 2540). One of the state's most distinguished jurists—having served on the federal judiciary since 1992—Judge Simandle would also be a logical choice. Judge Arleo in the Newark Division presides over *AZEK Building Prods., Inc. Mktg. & Sales Prac.* (MDL No. 2506), which only has three cases. Before she became a district judge in 2014, Judge Arleo served as a magistrate judge for nearly 15 years and gained extensive MDL experience, including with the *In re: Zimmer Durom Hip Cup Prods. Liab. Litig.* (MDL No. 2158) proceedings.

Fifth, the Camden and Newark divisions are very accessible to the parties, witnesses, and counsel. Most of Ethicon's anticipated witnesses and documents are located in Somerville, New Jersey, while some witnesses may be located in Europe. The Camden federal courthouse is just 14 miles from Philadelphia International Airport, an American Airlines hub which serves approximately 1000 flights per day, including direct flights to 88 domestic locations and 18 international destinations. (Ex. 1, airport data). The Newark federal courthouse is less than five miles from Newark Liberty International Airport. A United Airlines hub, that airport has over

1200 flights per day, including direct flights to 82 domestic locations and 77 international destinations. *Id.*

The courthouses in Camden and Newark, therefore, are much more "convenient and accessible" to most of the parties, witnesses, and counsel than the venues suggested by Plaintiffs, and the Panel has noted the accessibility of this district on several occasions. *See, e.g., In re: Nickelodeon*, 949 F. Supp. 2d at 1377-78; *In re: Insurance Brokerage Antitrust Litig.*, 360 F. Supp. 2d 1371, 1373 (J.P.M.L. 2005); *In re: Comp. of Managerial, Prof'l & Tech. Employees Antitrust Litig.*, 206 F. Supp. 2d 1374, 1375-76 (J.P.M.L. 2002) ("[T]he District of New Jersey [is an] accessible, urban district[] equipped with the resources that this complex docket is likely to require").

B. Alternatively, these cases should be centralized in the Eastern District of Kentucky or the Northern District of Georgia.

Defendants alternatively suggest that any MDL be assigned to Judge Danny C. Reeves in the Eastern District of Kentucky or Judge Timothy C. Batten in the Northern District of Georgia. These experienced MDL judges sit in geographically-accessible districts where at least one constituent action is pending, and the most recent government statistics indicate that neither of these judges presides over any civil cases pending more than three years or any motions pending more than six months. (*See* Civil Justice Reform Act of 1990 Report, pp. 32, 64 (Mar. 31, 2016), http://www.uscourts.gov/sites/default/files/data_tables/cjra.na.0331.2016.pdf).

One constituent case is currently pending in the Eastern District of Kentucky and assigned to Judge Amul R. Thapar, who was recently nominated to the United States Court of Appeals for the Sixth Circuit. This district is only the 69th busiest district in the country by pending civil cases per judge—thus it has far more capacity to accommodate a new MDL than the venues suggested by Plaintiffs. (Judicial Caseload Profile, *supra*). *See also In re Tyco Int'l,*

Ltd. Sec. Litig., MDL No. 1335, 2000 U.S. Dist. LEXIS 5551, at *3 (J.P.M.L. Apr. 26, 2000) (coordinating proceedings in district where "the docket [was] significantly less congested than that of the other preferably suggested transferee district").

The Eastern District of Kentucky has recent experience handling medical products liability MDLs, as Judge Danny Reeves presided over *In re: Darvocet, supra* (MDL No. 2226). During those proceedings, which have now concluded, Judge Reeves agreed to sit in the Covington, Kentucky courthouse, which is only minutes away by car from the Cincinnati/Northern Kentucky International Airport. A Delta Airlines hub, that airport is situated in a central location, and it has direct flights to 48 domestic destinations and seven international destinations. (Ex. 1, airport data). *See also In re: Inter-op Hip Prosthesis Prods. Liab. Litig.*, 149 F. Supp. 2d 931, 933 (J.P.M.L. 2001) (assigning MDL to "an accessible, geographically central metropolitan district"); *In re: Guidant Corp. Implantable Defibrillators Prods. Liab. Litig.*, 398 F. Supp. 2d 1371, 1372 (J.P.M.L. 2005) (same).

The Atlanta division of the Northern District of Georgia is one of the most accessible venues in the country and is especially convenient to many of the current parties' counsel. Hartsfield-Jackson International Airport is the world's busiest airport, accommodating 2500 flights per day and direct flights to approximately 150 domestic destinations and 70 international destinations—many more than the airports serving Plaintiffs' suggested venues. (Ex. 1, airport data). Eighty percent of the U.S. population is within a two-hour flight from the Atlanta airport, which is the primary hub of Delta Airlines. This airport is also uniquely capable of accommodating overseas witnesses.

Three constituent cases are currently pending in the Northern District of Georgia, including the *Lucas* case, which is the longest pending case in the country.[4] *See In re: Quaker Oats Maple & Brown Sugar Instant Oatmeal Mktg. & Sales Prac. Litig.*, 190 F. Supp. 3d 1349, 1351 n.4 (J.P.M.L. 2016) ("The 'first-to-file rule' is a doctrine of federal comity, pursuant to which, when related cases are pending before two federal courts, the court in which the case was last filed may refuse to hear it if the issues raised by the cases substantially overlap") (citations and internal quotation marks omitted); *In re: Uber Techs., Inc., Tel. Consumer Prot. Act Litig.*, No. MDL 2733, 2016 WL 5846034, at *2 n.5 (J.P.M.L. Oct. 3, 2016) (quoting same); *In re: Genetech Herceptin (trastuzumab) Mktg. & Sales Prac. Litig.*, 178 F. Supp. 3d 1374, 1376 (J.P.M.L. 2016) (assigning MDL to district on the basis that the "first-filed and most procedurally advanced action is pending in that district"); *In re: Prudential Ins. Co. of Am. SGLI/VGLI Contract Litig.*, 763 F. Supp. 2d 1374, 1375 (J.P.M.L. 2011) ("As we have previously held, it is appropriate to give the first-filed criterion some weight in selecting a transferee district"); *In re: Refined Petrol Prods. Antitrust Litg.*, 528 F. Supp. 2d 1365, 1367 (J.P.M.L. 2007) (transferring to the district where the pending action was the "most advanced").

Judge Timothy Batten (appointed in 2006) is currently presiding over the *In re: Delta/AirTran Baggage Fee Antitrust* MDL (MDL No. 2089). That MDL appears to be concluding.[5] Further, this district has significant experience handling MDLs and appears to have more capacity to accommodate a new MDL than Plaintiffs' suggested venues. (Judicial

[4] The plaintiffs in that case did not join in the motion for transfer, and that case was omitted from Plaintiffs' filings. *Lucas* and two other PHYSIOMESH cases are assigned to Senior Judge Harold L. Murphy, who sits in the Rome division. Rome, Georgia, is in a relatively remote location in the northwest corner of the state and is not nearly as accessible as Atlanta.

[5] Judge Richard W. Story in the Atlanta division of that district (appointed in 1998) is also a very experienced jurist.

Caseload Profile, *supra*). In fact, the six-month average time between filing and disposition of civil cases in that district is the sixth quickest in the entire country. (*Id.*).

C. The Middle District of Florida is not an appropriate venue.

According to Plaintiffs, "the Middle District of Florida is uniquely situated as the appropriate forum to handle these cases because that Court has the most constituent cases filed, and one of the first-filed cases in the country." (Doc. 1-1, p. 4). While there are more cases pending in that district than other districts, that is because Plaintiffs' counsel have chosen to file more of the earlier suits there, perhaps in order to influence the Panel's choice of MDL venue. This is a matter virtually exclusively under the control of Plaintiffs' counsel. There is no product-related reason to believe that there will be a disproportionate number of filings in the Middle District of Florida as opposed to any other district.

Little deference should be accorded to the plaintiffs' choice of forum when the events giving rise to their claims occurred outside the district and their primary goal in bringing suit in that district is to create a *de facto* MDL. *See In re: Eastern Dist. Repetitive Stress Injury Litig.*, 850 F. Supp. 188, 194 (E.D.N.Y. 1994).[6] The gravamen of Plaintiffs' claims is that PHYSIOMESH was defectively designed and/or the warnings contained in the IFU were inadequate. None of the events connected with these claims took place in Florida.

[6] *See also In re: CVS Caremark Corp Wage & Hour Employment Prac. Litig.*, 684 F. Supp. 2d 1377, 1379 (J.P.M.L. 2010) ("[W]here a Section 1407 motion appears intended to further the interests of particular counsel more than those of the statute, we would certainly find less favor in it"); Hon. John G. Heyburn II, *The Problem of Multidistrict Litigation: A view from the Panel: Part of the Solution*, 82 Tul. L. Rev. 2225, 2241 (2008) ("The Panel . . . will act to avert or deflect attempts by a party or parties to 'game' the system"); David F. Herr, *Multidistrict Lit. Manual* §§ 5:41, 7:7 (2016) (noting "the judiciary's traditional opposition to tactics designed merely to permit forum-or judge-shopping," that "[t]he Panel does not give the parties an opportunity to judge-shop," and that "[t]he Panel is quite ready to ignore the positions taken by the parties, especially when the odor of forum shopping is present").

Plaintiffs suggest that the Middle District of Florida is the appropriate forum on the purported basis that "one of the first-filed cases in the country" [*Quinn*] is in that district. (Doc. Doc. 1-1, p. 5). Yet as explained above, two other cases have been pending longer, including the *Lucas* case, which has been pending in the Northern District of Georgia since December 2015—nearly a year longer than the *Quinn* case.

More important, the *Quinn* case is truly in its infancy. Not only was the complaint filed relatively recently—September 22, 2016—but the plaintiff in that case has not yet served written discovery requests, and no depositions have been scheduled or taken. The parties have not personally appeared before the assigned judge. Quite simply, nothing has transpired in that case that would afford that court greater knowledge about the issues in these cases than any other federal court in the country.

Advocating for an assignment to Judge Byron, Plaintiffs quote from *In re: American Inv. Life Ins. Co. Annuity Mktg. & Sales Prac. Litig.*, 398 F. Supp. 2d 1361, 1362 (J.P.M.L. 2005), which suggests that the Panel should assign an MDL to a judge who "has already developed familiarity with the issues present in this docket as a result of presiding over motion practice and other pretrial proceedings in the actions pending before her for the past year." In stark contrast to the court in *American Inv.*, Judge Byron has not had the opportunity to develop <u>any</u> familiarity with the issues. Nor have the judges for any of the other cases filed in the Middle District of Florida developed any familiarity with the issues. Indeed, even Plaintiffs acknowledge that "[n]one of the related actions are sufficiently advanced toward trial." (Doc. 1, p. 2). Thus, the statistically insignificant number of cases that happen to be currently pending in Florida and the lack of significant progress in those cases does not support centralization in Florida. *See In re: Darvocet, Darvon & Propoxyphene Prod. Liab. Litig.*, 780 F. Supp. 2d 1379, 1381-82 (J.P.M.L.

2011) ("[T]he location of the currently filed cases is not a particularly significant factor in our decision. . . . Since all the actions in this docket are at an early stage, transfer to another district should not be disruptive").

Consideration of the location of the parties, witnesses, and documents also does not support the Middle District of Florida as the appropriate transferee court. Plaintiffs (and their counsel), treating physicians, and expert witnesses will be spread across the country. Defendants are New Jersey corporations, and Defendants' witnesses and documents are located primarily in New Jersey and other places (i.e., Europe), not including Florida. There is no reason to centralize these cases in the southeast corner of the United States. Even if the Southeast is truly the "center of gravity" of this litigation as claimed by Plaintiffs (Doc. 1-1, p. 7), Atlanta (or even Covington, Kentucky) would be more accessible and convenient than any cities in Florida.[7]

Finally, considering judicial efficiency, caseloads, existing MDL dockets, and experience of proposed transferee courts, other venues are much more suitable than the Middle District of Florida. Should the Panel centralize these cases, they should be transferred to an experienced federal judge whose docket is equipped to handle such a proceeding. *See, e.g., In re: Google Inc. Cookie Placement Consumer Privacy Litig.*, 867 F. Supp. 2d 1356, 1357 (J.P.M.L. 2012) (assigning MDL to "a jurist experienced in complex multidistrict litigation"); *In re: Blood Reagents Antitrust Litig.*, 652 F. Supp. 2d 1373, 1374 (J.P.M.L. 2009); *In re: Vioxx Prods. Liab. Litig.*, 360 F. Supp. 2d 1352, 1354 (J.P.M.L. 2005) ("[W]e are assigning this litigation to a jurist

[7] To the extent that filings have been weighted toward the Southeast thus far, it is only because Plaintiffs' counsel strategically chose to file these cases early in order to argue for the venue of their choice. This is, at most, a temporary situation, and there is no reason to believe that will continue. Indeed, after Plaintiffs filed their motion, PHYSIOMESH cases were filed in the Western District of New York, the Western District of Washington, the District of Minnesota, the Western District of Michigan, the Southern District of Ohio, the District of North Dakota, and other jurisdictions.

experienced in complex multidistrict products liability litigation and sitting in a district with the capacity to handle this litigation").

Respectfully, Plaintiffs' first choice, Judge Byron, has no MDL experience and has been on the bench for fewer than three years. *See In re: Ampicillin Antitrust Litig.*, 315 F. Supp. 317, 319 (J.P.M.L. 1970) ("[T]he availability of an experienced and capable judge familiar with the litigation is one of the more important factors in selecting a transferee forum"). As for Plaintiffs' alternative suggestions, Senior Judge Susan Bucklew has never presided over an MDL, and Judge James Whittemore has not presided over a products liability MDL.

D. The Southern District of Illinois is not an appropriate venue.

Plaintiffs, like many other recent plaintiffs,[8] alternatively request transfer to the Southern District of Illinois and an assignment to Judge David Herndon. Plaintiffs' only explanation for suggesting Judge Herndon is that he "has substantial product liability MDL experience, and he has proven to be an innovative and well-qualified MDL judge." (Doc. 1-1, pp. 7-8).

Other than touting Judge Herndon's experience, Plaintiffs do not explain how centralization in the Southern District of Illinois is consistent with the traditional criteria in selecting an MDL forum. The Southern District of Illinois is already over-burdened as the 12th busiest district court in the country by pending civil cases per judge. (Judicial Caseload Profile, *supra*). Further, 41.5% of that district's civil docket has been pending more than three years,

[8] *See, e.g., In re: Farxiga Prods. Liab. Litig.*, MDL 2776, Doc. 1 (J.P.M.L. Feb. 3, 2017); *In re: Proton Pump Inhibitor Prods. Liab. Litig.*, MDL 2757, Doc. 46 (J.P.M.L. Nov. 7, 2016); *In re: Invokana Prods. Liab. Litig.*, MDL 2750, Doc. 34 (J.P.M.L. Oct. 12, 2016); *In re: Taxotere Mktg., Sales Practices & Prods. Liab. Litig.*, MDL 2740, Doc. 20 (J.P.M.L. Aug. 3, 2016); *In re: RoundUp Prods. Liab. Litig.*, MDL 2741, Doc. 1 (J.P.M.L. July 27, 2016); *In re: Fluorquinolane Prods. Liab. Litig.*, MDL 2642, Doc. 1 (J.P.M.L. May 19, 2016); *In re: Johnson & Johnson Talcum Powder Prods. Mktg., Sales Practices & Prods. Liab. Litig.*, MDL 2738, Doc. 1 (J.P.M.L. July 15, 2016); *In re: Xarelto Prods. Liab. Litig.*, MDL 2592, Doc. 1 (J.P.M.L. Oct. 9, 2014); *In re: Pradaxa Prods. Liab. Litig.*, MDL 2385, No. 1 (J.P.M.L. May 30, 2012); *In re: Actos Prod. Liab. Litig.*, MDL 2299, Doc. 1 (J.P.M.L. Aug. 31, 2011).

ranking it 93rd out of 94 districts (**second to last**), and this district is ranked 92nd of 94 (**third to last)** in terms of the time from filing to resolution of civil cases. *Id.*

Moreover, another judge in the Southern District of Illinois—Judge Nancy Rosenstengel—has entered an order in the *In re: Depakote* consolidated proceeding stating that she intends to "ensure that the majority, if not all, of the cases pending in this district are tried by the end of 2017." *See In re: Depakote*, No. 3:12-cv-00052, Order at 1-2 (S.D. Ill. July 6, 2016) (Ex. 2). That docket includes approximately 129 cases involving approximately 691 plaintiffs. *Id.* at 1. Judge Rosenstengel stated that she anticipated that her trial plan will be "a **massive undertaking involving all of this district's resources**." *Id*. (emphasis added). There is no reason to assign an MDL to an already overtaxed district court when many other more suitable district courts have the capacity to handle a new assignment.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Panel deny Plaintiffs' request to centralize these cases. Alternatively, Defendants request that the actions be transferred to the District of New Jersey (Judges Kugler, Simandle, or Arleo), or in the alternative, the Eastern District of Kentucky (Judge Reeves) or the Northern District of Georgia (Judge Batten).

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PROOF OF SERVICE

I hereby certify that on April 13, 2017, I served the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the CM/ECF participants registered to receive service in this JPML.

A copy of the foregoing document was sent to the following:

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This 13th day of April, 2017.

Respectfully submitted,

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ATADS : Airport Operations : Standard Report

From 3/7/2016 To 2/24/2017 Days Omitted | Facility=PHL, EWR, ATL, CVG

		Itinerant					Local			
Date	Facility	Air Carrier	Air Taxi	General Aviation	Military	Total	Civil	Military	Total	Total Operations
03/07/2016	ATL	2,268	278	19	4	2,569	0	0	0	2,569
03/07/2016	CVG	204	135	5	0	344	0	0	0	344
03/07/2016	EWR	840	318	40	2	1,200	0	0	0	1,200
03/07/2016	PHL	613	449	30	3	1,095	0	0	0	1,095
Sub-Total for 03/07/2016		3,925	1,180	94	9	5,208	0	0	0	5,208
06/14/2016	ATL	2,226	234	27	0	2,487	0	0	0	2,487
06/14/2016	CVG	268	154	34	0	456	0	0	0	456
06/14/2016	EWR	911	365	43	0	1,319	0	0	0	1,319
06/14/2016	PHL	704	482	52	5	1,243	0	0	0	1,243
Sub-Total for 06/14/2016		4,109	1,235	156	5	5,505	0	0	0	5,505
09/21/2016	ATL	2,261	284	22	0	2,567	0	0	0	2,567
09/21/2016	CVG	280	122	35	0	437	0	0	0	437
09/21/2016	EWR	870	355	64	2	1,291	0	0	0	1,291
09/21/2016	PHL	648	488	53	0	1,189	0	0	0	1,189
Sub-Total for 09/21/2016		4,059	1,249	174	2	5,484	0	0	0	5,484
12/01/2016	ATL	2,221	259	32	2	2,514	0	0	0	2,514
12/01/2016	CVG	310	141	16	2	469	0	0	0	469
12/01/2016	EWR	1,002	341	34	0	1,377	0	0	0	1,377
12/01/2016	PHL	617	437	43	0	1,097	0	0	0	1,097
Sub-Total for 12/01/2016		4,150	1,178	125	4	5,457	0	0	0	5,457
02/24/2017	ATL	2,212	275	22	0	2,509	0	0	0	2,509
02/24/2017	CVG	295	107	12	2	416	0	0	0	416
02/24/2017	EWR	952	292	23	2	1,269	0	0	0	1,269
02/24/2017	PHL	594	397	41	0	1,032	0	0	0	1,032
Sub-Total for 02/24/2017		4,053	1,071	98	4	5,226	0	0	0	5,226

ATADS : Airport Operations : Standard Report

From 3/7/2016 To 2/24/2017 Days Omitted | Facility=PHL, EWR, ATL, CVG

		Itinerant					Local			
Date	Facility	Air Carrier	Air Taxi	General Aviation	Military	Total	Civil	Military	Total	Total Operations
Total:		**20,296**	**5,913**	**647**	**24**	**26,880**	**0**	**0**	**0**	**26,880**

Report created on Tue Apr 11 16:09:02 EDT 2017
Sources: Air Traffic Activity System (ATADS)
Show data notices.

- **Itinerant** – Represents operations that arrive from outside the traffic pattern or depart the airport traffic pattern.
- **Local** – Represents operations that stay within the traffic pattern airspace (non-itinerant).
- **Total Operations** – Represent all Instrument Flight Rule (IFR) plus Visual Flight Rule (VFR) airport operations — both landings and take-offs — for the time period you requested. To determine the number of flights, divide Total Operations in half.

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PHL Fast Facts

Philadelphia Airports:

Philadelphia International Airport – PHL
Northeast Philadelphia Airport – PNE

Economic Impact: PHL generates more than $14.4 billion in spending to the regional economy and accounts for more than 141,000 jobs within the region.

Philadelphia International Airport (PHL)

Land Area: 2,410 acres

Terminals: PHL has 3,254,354 square feet of terminal space encompassing seven (7) terminal buildings with 126 total boarding gates.

Cargo: PHL has 449,761 square feet of cargo space. PHL's cargo buildings include six (6) active cargo facilities and an American Airlines maintenance hangar.

Runways:

- 9R/27L: 10,500'
- 9L/27R: 9,500'
- 17/35: 6,500'
- 8/26: 5,000'

Personnel (as of January 2017):

Division of Aviation: 859
Other City of Philadelphia employees: 21
Other Airport workers: approximately 19,179

Hotel: Philadelphia Airport Marriott Hotel: 419 rooms

Parking:

Garage: 10,984 spaces
Short-Term: 839 spaces
Surface: 7,117 spaces
Total: 18,940 public parking spaces

Cell Phone Waiting Lot: 150 spaces

Employee Parking: 4,250 spaces

PHL's Top Airlines (2016, January thru December)

	Total Passengers
• American Airlines	21,356,543
• Southwest Airlines	2,290,466
• Delta Air Lines	2,144,811
• United Airlines	1,300,302
• Frontier Airlines	1,206,493

	Total Freight (short tons)
• UPS	244,967
• FedEx	97,746
• American Airlines	46,658
• British Airways	10,500
• Lufthansa	5,639

PHL's Top Airlines (2015, January thru December)

	Total Passengers
• US Airways	22,080,297
• Delta Air Lines	2,247,835
• Southwest Airlines	2,183,644
• American Airlines	1,330,578
• United Airlines	1,266,156

	Total Freight (short tons)
• UPS	231,151
• FedEx	88,662
• US Airways	49,543
• British Airways	9,964
• Lufthansa	5,981

PHL Rankings for 2015:

Among U.S. Airports:

19th	Total Passengers
18th	Total Cargo (freight + mail)
14th	Total Movements (takeoffs + landings)

PHL Fast Facts

PHL Figures for 2016:

Total Plane Movements (takeoffs + landings): 394,022

Passengers:
Domestic: 25,963,459
International: 4,191,631
Total: 30,155,090 *(approx. 83,000 daily)*

Cargo (freight + mail):
Domestic: 311,734 tons
International: 134,077 tons
Total: 427,285 tons

Cargo (freight only):
Domestic: 288,738 tons
International: 133,324 tons
Total: 422,062 tons

PHL Carriers and Destinations (as of Q1 2017):

Carriers:
Mainline: 8
Commuter: 11
Foreign: 4
Cargo: 2
Total: 25

Nonstop Destinations:
Domestic: 91 (88 + 3 seasonal)
International: 33 (18 + 15 seasonal)
Total: 124 (106 + 18 seasonal)

Daily Flights (Departures):
Domestic: 408
International: 36
Total: 444

New Air Service:
- Frontier Airlines: IAH, PBI (March 13, 2017)

Upcoming Air Service:
- Frontier Airlines: SAT (April 23, 2017)
- Alaska Airlines: PDX (May 23,2017)
- Iceland Air: KEF (May 30, 2017)
- Alaska Airlines: SFO (Aug 31, 2017

Capital Improvement Program: PHL has undergone more than $2 billion in capital improvements since 2000.

Major Construction Projects:
- Terminal F: $100 million, opened 2001
- Terminal A-West: $550 million, opened 2003
- Terminal D expansion: $20 million, completed 2003
- Terminal A-East renovation: $12.5 million, completed 2007
- Runway 17/35 extension: $ 73.8 million, completed 2009
- Terminal E expansion: $45 million, opened 2010
- Runway 9L/27R rehabilitation: $ 1.8 million, completed 2015
- Taxiway K extension: $19.7 million, completed 2015

Ongoing Capital Projects:
- Terminal F expansion: estimated $162 million
- Terminal A-East improvements: estimated $82.3 million
- Terminal D/E improvements: estimated $367 million
- Runway 9R/27L extension and associated taxiway work: estimated $193 million

Northeast Philadelphia Airport (PNE)

Land Area: 1,126 acres
Hangars: PNE has 85 T-hangars, nine (9) corporate hangers, and six (6) open hangars for general aviation activities.
Based Aircraft: approximately 175

Runways:
6/24: 7,000'
15/33: 5,000'

PNE Figures for 2015:

Total Plane Movements (takeoffs + landings): 54,222

Last updated March 22, 2017

Aviation Department

Traffic Statistics: J. Quayson, S. Grullon, J. Debrosse, T. Japi

Similar to last year, EWR continues to set the pace among our facilities as traffic jumped 10.1 percent while setting a record for the month of January – 3.2 million passengers. The domestic sector, which accounts for nearly 70 percent of EWR's total passenger traffic, registered double-digit growth – up 10.2 percent. The international sector grew a solid 9.9 percent, or 87,896 extra passengers. Similar to passenger traffic, EWR continues to be the fastest growing in terms of net contribution to the region's overall cargo performance with an 8.8 percent gain (+4,811 tons). Domestic cargo, which constitutes approximately 65 percent of the airport's total cargo, led this solid improvement with an 11.1 percent surge, gaining 3,860 tons. International cargo grew 4.8 percent, adding 951 tons.

Current month,12 months ending,year-to-date totals Showing percentage change from prior year period

THE PORT AUTHORITY OF NY & NJ

JANUARY 2017 TRAFFIC REPORT

EWR

	Month		Year-to-date		12 Months Ending	
	Current	%	Current	%	Current	%
PASSENGERS						
Domestic	2,221,422	10.2	2,221,422	10.2	28,424,422	9.5
International	979,289	9.9	979,289	9.9	12,432,765	5.0
Total Revenue Passengers	**3,200,711**	**10.1**	**3,200,711**	**10.1**	**40,857,187**	**8.1**
Non Revenue Passengers	**98,917**	**12.5**	**98,917**	**12.5**	**1,298,071**	**11.9**
Note: Commuter - Regional Pax incl. in above	**483,716**	**-1.1**	**483,716**	**-1.1**	**7,144,219**	**1.1**
FLIGHTS						
Domestic	26,181	-1.7	26,181	-1.7	329,987	5.0
International	7,481	6.6	7,481	6.6	92,470	2.9
General Aviation	974	18.2	974	18.2	13,602	4.7
Total	**34,636**	**0.4**	**34,636**	**0.4**	**436,059**	**4.5**
Note:freighter flights included in above	**1,681**	**2.3**	**1,681**	**2.3**	**21,904**	**-0.3**
Note: Commuter - Regional Flights incl. in above	**11,401**	**3.5**	**11,401**	**3.5**	**155,334**	**0.7**
FREIGHT (in short tons)						
Domestic	38,490	11.1	38,490	11.1	490,103	9.1
International	20,891	4.8	20,891	4.8	261,479	2.5
Total	**59,381**	**8.8**	**59,381**	**8.8**	**751,582**	**6.7**
MAIL (in short tons)						
Total	**4,000**	**3.8**	**4,000**	**3.8**	**45,945**	**-8.0**
Ground Transportation						
Paid Parked Cars	219,614	3.0	219,614	3.0	2,841,119	-1.1
Ground Transpo.Counter Bookings	6,210	-5.7	6,210	-5.7	97,567	1.0
Airport Coach Passengers	17,593	24.3	17,593	24.3	248,924	10.1
Taxis Dispatched	66,847	4.0	66,847	4.0	921,910	5.1
NJ Transit: Port Authority Bus Terminal	27,678	52.8	27,678	52.8	331,648	17.7
EWR Air Train Passengers	171,960	0.0	171,960	0.0	2,547,957	-0.4
Air Transport Association Carriers (USA)						
Passengers:Domestic Enplaned (000)	30,740	3.4	30,740	3.4	407,690	3.6
Passengers:International Enplaned (000)	5,455	4.2	5,455	4.2	65,051	2.9
Freight:revenue ton miles (000)	1,854,600	0.2	1,854,600	0.2	23,550,559	-0.1

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Other Information about our airports? Visit URL: www.panynj.gov/airports/general-information.html?tabnum=2

EWR

Top 20 Airlines 12 months ending January 2017

Airline Ranking by Passengers

Rank	Airline Name	Domestic	Intl	Total	Cum %
1	UNITED	19,952,999	8,120,114	**28,073,113**	68.8
2	AMERICAN	2,130,372	0	**2,130,372**	74.0
3	JETBLUE AIRWAYS	1,800,883	87,521	**1,888,404**	78.6
4	DELTA	1,607,066	226,489	**1,833,555**	83.1
5	SOUTHWEST AIRLINES	1,360,408	0	**1,360,408**	86.4
6	AIR CANADA	0	585,328	**585,328**	87.9
7	VIRGIN AMERICA	552,793	0	**552,793**	89.2
8	LUFTHANSA	0	544,237	**544,237**	90.5
9	SAS	0	539,419	**539,419**	91.9
10	US AIRWAYS	493,210	0	**493,210**	93.1
11	PORTER AIRLINES	0	405,148	**405,148**	94.1
12	ALASKA AIRLINES	271,115	0	**271,115**	94.7
13	BRITISH AIRWAYS	0	270,837	**270,837**	95.4
14	AIR INDIA	0	232,182	**232,182**	96.0
15	CATHAY PACIFIC	0	185,535	**185,535**	96.4
16	AIR PORTUGAL(TAP)	0	182,779	**182,779**	96.9
17	SPIRIT AIRLINES	175,357	0	**175,357**	97.3
18	EL AL	0	163,843	**163,843**	97.7
19	VIRGIN ATLANTIC	0	156,764	**156,764**	98.1
20	SWISS INT'L AIR LINES LT	0	134,061	**134,061**	98.4

Ranking by Freight Volume

Rank	Airline Name	Tons	Cum%
1	FEDERAL EXPRESS	**352,045**	46.8
2	UNITED PARCEL	**144,911**	66.1
3	UNITED	**133,381**	83.9
4	SAS	**25,242**	87.2
5	LUFTHANSA	**17,699**	89.6
6	ABX AIR INC	**16,248**	91.7
7	BRITISH AIRWAYS	**10,605**	93.2
8	VIRGIN ATLANTIC	**9,726**	94.4
9	SWISS INT'L AIR LINE	**6,413**	95.3
10	EL AL	**4,893**	96.0
11	DELTA	**4,711**	96.6
12	AIR CHINA INTERNATI	**4,707**	97.2
13	CATHAY PACIFIC	**4,231**	97.8
14	AIR PORTUGAL(TAP)	**3,249**	98.2
15	AUSTRIAN AIRLINES	**2,460**	98.5
16	CARGOJET AIRWAYS	**2,351**	98.8
17	SOUTHWEST AIRLINE	**2,282**	99.1
18	AIR CANADA	**1,883**	99.4
19	AIR INDIA	**1,170**	99.6
20	JET AIRWAYS	**952**	99.7

Passengers & Freight by Market Group

12 Month Ending Data	Passengers	Freight
DOMESTIC	28,424,422	490,103
CANADA	1,495,133	1,885
CARIBBEAN + BERMUDA	1,748,424	5,028
CENTRAL AND SOUTH AMERICA	807,585	4,144
MEXICO	652,247	801
TRANSATLANTIC	6,606,873	216,884
TRANSPACIFIC	1,122,503	32,737

Passenger Demographic Data

Survey taken from May to mid June 2016

Business Only	21.2%	Local Origin & Destination	68.1%
Leisure, some Business, Other	78.8%	Connecting Passengers	31.9%
Male	54.4%	Average age	37.5
Female	45.6%	Average Household Income	$109,282
O&D Passenger Mode of Access:		***Local Passenger Origin***	
Private Car	39.2%	New Jersey	53.5%
Drove Rental Car	10.2%	NYC	28.6%
Taxi	6.4%	Manhattan	20.3%
Limo/Town Car	7.2%	Brooklyn	3.7%
Uber/Lyft	8.7%	Queens	2.7%
SuperShuttle/Shared-Ride Van	4.3%	Pennsylvania	7.7%
Train/Subway/AirTrain	10.1%	Westchester & Rockland	1.5%
Bus	4.8%	Connecticut	1.3%
Local Shuttle/Van	9.0%		

OAG schedules: airlines serving EWR

Domestic Passenger Service	*Flights (daily)*	*Airlines*
Scheduled	183.3	9
Commuter	138.4	4
@Sub-Total	321.7	13
International Passenger Service		
Scheduled: USA Flag	48.6	3
Scheduled: Foreign Flag	33.4	19
Commuter: USA Flag	10.6	2
@Sub-Total	92.6	24
Freighter Service		
All Cargo: USA Flag	0.4	1
All Cargo: Foreign Flag	0.7	1
@Sub-Total	1.1	2
@USA Airlines(Un-duplicated)	381.2	11
@Foreign Airlines(Un-duplicated)	38.6	21

OAG schedules: Nonstop Destinations

Domestic nonstop cities served	*Flights (daily)*	*Cities*
Jet Service Provided	239.7	50
Service Exclusively by Regional Airlines	82.0	38
@Sub-Total	321.7	88
International nonstop cities served		
Jet service provided		
Central America Less Mexico	3.2	7
South America	2.6	3
Mexico	4.5	4
Canada	29.0	7
Transpacific	9.6	8
Transatlantic	36.8	30
Carribean and Bermuda	10.4	16
@Sub-Total	96.1	75
Total number of cities having nonstop services	417.8	163

Nonstop Cities

CVG is the Tri-State's premier airport, offering more departures to more nonstop destinations than any surrounding airport. The list below shows the number of peak-day flights by carrier to each destination. Cities in green are hubs that offer convenient connections to additional destinations. Use the airline links to get pricing and additional information directly from each carrier.

FLIGHT INFORMATION

- Flight Status
- Fare Deals
- Nonstop Cities
- Airlines
- TSA / Security
- Tips & FAQs
- Private Aircraft

View Nonstop Flights Map

Destination	Frequency	Airline
Atlanta, GA (ATL)	8	Delta
Atlanta, GA (ATL)	1	Fly Frontier
Austin, TX (AUS)	1	Allegiant
Baltimore, MD (BWI)	1	Allegiant
Baltimore, MD (BWI)	2	Delta
Baltimore, MD (BWI)	3	Southwest
Boston, MA (BOS)	4	Delta
Cancun, MX (CUN)	1	Apple Vacations
Cancun, MX (CUN)	1	Fly Frontier
Cancun, MX (CUN)	1	Delta
Cancun, MX (CUN)	1	Vacation Express
Charlotte, NC (CLT)	3	Delta
Charlotte, NC (CLT)	7	American Airlines
Chicago, IL (ORD)	7	American Airlines
Chicago, IL (ORD)	5	Delta
Chicago, IL (ORD)	7	United
Chicago, IL (MDW)	5	Southwest
Dallas, TX (DFW)	5	American Airlines
Dallas, TX (DFW)	2	Delta

Dallas, TX (DFW)	1	Fly Frontier
Denver, CO (DEN)	2	Delta
Denver, CO (DEN)	2	Fly Frontier
Denver, CO (DEN)	2	United
Destin, FL (VPS)	1	Allegiant
Detroit, MI (DTW)	6	Delta
Ft. Lauderdale, FL (FLL)	1	Allegiant
Ft. Lauderdale, FL (FLL)	1	Delta
Ft. Lauderdale, FL (FLL)	1	Fly Frontier
Ft. Myers, FL (RSW)	1	Delta
Ft. Myers, FL (RSW)	1	Fly Frontier
Freeport, GB (FPO)	1	Vacation Express
Hartford, CT (BDL)	2	Delta
Houston, TX (IAH)	2	Delta
Houston, TX (IAH)	1	Fly Frontier
Jacksonville, FL (JAX)	1	Allegiant
Kansas City, MO (MCI)	2	Delta
Las Vegas, NV (LAS)	1	Allegiant
Las Vegas, NV (LAS)	1	Delta
Las Vegas, NV (LAS)	1	Fly Frontier
Los Angeles, CA (LAX)	2	Delta
Los Angeles, CA (LAX)	1	Fly Frontier
Memphis, TN (MEM)	2	Delta
Miami, FL (MIA)	2	American Airlines
Milwaukee, WI (MKE)	1	Delta
Minneapolis, MN (MSP)	6	Delta
Minneapolis, MN (MSP)	1	Fly Frontier
Montego Bay, JA (MBJ)	1	Apple Vacations
Montego Bay, JA (MBJ)	1	Vacation Express
Myrtle Beach, SC (MYR)	1	Allegiant

Nashville, TN (BNA)	2	Delta
Newark, NJ (EWR)	1	Allegiant
Newark, NJ (EWR)	3	Delta
New Orleans, LA (MSY)	1	Allegiant
New York, NY (JFK)	1	American Airlines
New York, NY (JFK)	1	Delta
New York, NY (LGA)	3	American Airlines
New York, NY (LGA)	6	Delta
New York, NY (LGA)	1	Fly Frontier
NW Arkansas, AR (XNA)	1	Delta
Orlando, FL (MCO)	2	Delta
Orlando, FL (MCO)	1	Fly Frontier
Orlando, FL (SFB)	1	Allegiant
Paris, FR (CDG)	1	Delta
Philadelphia, PA (PHL)	6	American Airlines
Philadelphia, PA (PHL)	3	Delta
Philadelphia, PA (PHL)	1	Fly Frontier
Phoenix, AZ (PHX)	1	Fly Frontier
Phoenix-Mesa (AZA)	1	Allegiant
Pittsburgh, PA (PIT)	2	OneJet
Punta Cana, DO (PUJ)	1	Apple Vacations
Punta Cana, DO (PUJ)	1	Vacation Express
Punta Gorda, FL (PGD)	1	Allegiant
Raleigh, NC (RDU)	3	Delta
Salt Lake, UT (SLC)	1	Delta
San Diego, CA (SAN)	1	Fly Frontier
San Francisco, CA (SFO)	1	Delta
San Francisco, CA (SFO)	1	Fly Frontier
San Francisco, CA (SFO)	1	United
San Juan, PR (SJU)	2	Allegiant

Savanna, GA (SAV)	1	Allegiant
Seattle (SEA)	1	Delta
St. Louis, MO (STL)	2	Delta
Tampa, FL (TPA)	2	Delta
Tampa, FL (TPA)	1	Fly Frontier
Tampa-St. Pete, FL (PIE)	1	Allegiant
Toronto, CN (YYZ)	3	Air Canada
Toronto, CN (YYZ)	2	Delta
Washington, DC (DCA)	4	Delta
Washington, DC (DCA)	3	American Airlines
Washington, DC (IAD)	2	United

About ATL

Hartsfield-Jackson Atlanta International Airport is the busiest and most efficient airport in the world and, by some accounts, the best in North America. ATL is the economic jewel of Georgia, generating a $34.8 billion economic impact for metro Atlanta and providing more than 63,000 jobs onsite, making it the state's largest employer.

Hartsfield-Jackson is a global gateway, offering nonstop service to more than 150 domestic and nearly 70 international destinations. These locales include major commercial centers in Europe, Asia, the Caribbean, Africa, and South and Central America. ATL also holds the distinction of being the first airport in the world to serve more than 100 million passengers in a single year.

In many ways, Hartsfield-Jackson is more than an airport. It's also a destination. ATL's burgeoning concessions program features more than 300 commercial venues meeting guests' shopping, dining and service needs. And its art program integrates permanent and rotating exhibits and musical performances into the fabric of the guest experience.

Now with its capital improvement plan ATLNext, a 20-year blueprint for growth, the Airport is poised to modernize its Domestic Terminal, expand its cargo operations and concourses, replace two of its parking facilities, and pave the way for a hotel and mixed-use development that will further solidify Hartsfield-Jackson as a beacon of economic strength and customer service in Georgia – and beyond.

Additional Links

- **Leadership (http://www.atl.com/about-atl/leadership/)**
- **History of ATL (http://www.atl.com/about-atl/history-of-atl/)**
- **Awards (http://www.atl.com/airport-information/awards/)**
- **Amenities (http://www.atl.com/about-atl/airport-amenities/)**
- **ATL Fact Sheet (http://www.atl.com/about-atl/atl-factsheet/)**
- **Accessibility (http://www.atl.com/ADA)**
- **Airport Art (http://www.atl.com/about-atl/airport-art-program/)**

Welcome from Atlanta Mayor Kasim Reed

Thank you for choosing Atlanta and welcome to Hartsfield-Jackson Atlanta International Airport, the world's busiest and most efficient airport.

Hartsfield-Jackson is metro Atlanta's strongest economic engine, making a regional impact of nearly $35 billion and enabling more than 400,000 jobs.

The Airport is also Atlanta's gateway to the world – connecting the region through nonstop flights to more than 150 U.S. destinations and nearly 70 international destinations in more than 45 countries.

Whether Atlanta is your home or you are visiting for business or leisure, we welcome you. It is our pleasure to ensure your Airport experience is pleasant, safe and efficient, and we hope you have an opportunity to explore all our great city has to offer.

(http://one.atl.com/wp-content/uploads/2016/02/ATL.com-KasimReed.jpg)

Recent Awards

- World's Busiest Passenger Airport – Airports Council International
- World's Most Efficient Airport, Global Efficiency Excellence Award – Air Transport Research Society
- Best Airport in North America, Business Travel Award – Business Traveler Magazine
- Inclusion Champion Award – Airports Council International-North America
- Best Airport Dining Award – Global Traveler Magazine

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

IN RE DEPAKOTE:	)	
	)	
RHEALYN ALEXANDER, *et al.*,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No. 12-CV-52-NJR-SCW
	)	
ABBOTT LABORATORIES, INC.,	)	LEAD CONSOLIDATED CASE
	)	
Defendant.	)	

ORDER

ROSENSTENGEL, District Judge:

This Court currently has 129 cases, involving approximately 691 plaintiffs, pending on its docket. The first cases were filed in 2012, and cases continue to be filed each month. One bellwether case was tried in this Court in March 2015, and three other cases have been tried since then in other venues. At this point, three additional cases are set for trial in this district later this year. A case scheduled for trial in June 2016 has been continued generally in light of the unavailability of Plaintiffs' liability expert.

As the Court noted in its Order dated April 25, 2016 (Doc. 467), global settlement efforts have failed. Thus, it appears that a massive undertaking involving all of this district's resources will be required to try the majority of cases on the Court's docket. At the current pace of case resolution, the undersigned has calculated it will take over 34 years to close each case on the docket. The undersigned is currently consulting with Chief Judge Michael J. Reagan and the Circuit Executive for the Seventh Circuit to obtain the resources necessary to ensure that the majority, if not all, of the cases pending in this

district are tried by the end of 2017. This will obviously mean that many claims will necessarily be tried together at the same time, with multiple judges in several courthouses. While the issues are complicated and joint trials may in some circumstances be impracticable, at this point the Court can only focus on finding common issues to try, and extensive efforts will be spent to identify where the issues overlap.

While the Court recognizes trying all the cases by the end of 2017 is an ambitious timeframe, counsel is reminded that the majority of these cases have been pending in this district for almost four years. Unfortunately, it appears that the "bellwether" process has failed for these cases, given that there have been four Depakote trials in this country since 2013, and yet only *one* of hundreds of cases (in another district court–following a jury trial) has settled. The Court is also mindful that there are many attorneys representing both sides of this litigation, and both sides have significant resources to accomplish the work that needs to be done.

The parties are advised that the Court is now considering a variety of methods to allow for the joint and expedient resolution of all claims, including bifurcation of the issues, limitation of testimony, shortened trials, and, of course, to the extent possible, multiple trials of claims involving the same label and/or other overlapping issues. These methods will assist the Court in its obligation to "secure the just, speedy, and inexpensive determination" of these cases (*see* FED. R. CIV. P. 1) and are consistent with Rule 42.

In order to allow the Court to select groups of similar claims for trial, the parties are **ORDERED** to conduct the deposition of the prescribing physician(s) in the 132 cases attached as Exhibit A within **90 days** of the date of this Order. The parties shall report the following information to the Court within **14 days** of each deposition: (1) a summary of the physician's testimony, including the details of the prescribing decision, the indication, and the warning given; (2) the relevant Depakote label; (3) details concerning the warnings given as reflected in the medical records, and (4) any other relevant information related to the individual claim. The parties shall file a *joint* report (not to exceed five pages) for each deposed prescriber and, to the extent counsel is unable to agree on a summary of the testimony, counsel shall state their respective positions separately within the *same document* and attach a copy of the complete deposition transcript.

Counsel for Plaintiffs shall alert the Court concerning any prescribing physicians who cannot be located and/or produced for deposition within this timeframe as soon as possible but in any event before the expiration of the 90 day deadline and/or move for voluntary dismissal of those individual claims. Subpoena requests for depositions of any recalcitrant prescribing physicians will be liberally granted. The Court will review the summaries of the prescribing physician testimony as they are submitted and determine whether the case should proceed to a deposition of the mother and/or full discovery on that claim. The Court also will continue to review the pending cases and select the next group of cases to proceed with prescriber depositions.

Finally, because trial counsel will be consumed in the coming months with conducting these depositions and preparing mass cases for trial, both sides are *strongly encouraged* to retain independent, separate settlement counsel to pursue the possibility that at least some of these claims could be resolved without a trial and the inevitable costly appeal that will follow. While the Court's suggestion of this tactic has fallen on deaf ears in the past, it continues to be quite apparent that trial counsel is focused on trying individual claims, something the Court cannot do for the next 34 years. The parties shall continue to consult with the mediators in this case, attorneys Randi Ellis and John Perry, in an effort to resolve at least some of the cases on the Court's docket.

IT IS SO ORDERED.

DATED: July 6, 2016

Nancy J. Rosenstengel

NANCY J. ROSENSTENGEL
United States District Judge

TO ORDER COPIES OF ANY DOCUMENTS LISTED
BELOW, CALL WESTLAW COURTEXPRESS
1-877-DOC-RETR (1-877-362-7387) (Additional Charges Apply)

This docket is current through 04/11/2017

Current Date: 4/13/2017
Source: U.S. District Court, Northern District of Georgia (Rome)

Court:	U.S. District Court, Northern District of Georgia (Rome)
Case Title:	Lucas et al v. Johnson & Johnson et al
Case:	4:15-CV-00249
Judge:	Judge Harold L. Murphy
Date Filed:	12/28/2015
Other Dockets:	Case in other court: Floyd County Superior Court, 15cv2317JFL001
Case Status:	4months, PROTO, SEAL_Material

SYNOPSIS INFORMATION

Allegations:	Removed from the Superior Court of Floyd County, Georgia, under case no. 15-CV-02317JFL001. Plaintiff underwent a surgical procedure involving the use of defendant's defective device, which caused his bowel to be punctured that led plaintiff to become septic. Product: Physiomesh
Damages:	In excess of $28 million in damages, punitive and special damages, and costs.
COMPLAINT (MANUALLY RETRIEVED)	Original Image of this Document (PDF)

CASE INFORMATION

Case Number:	**4:15CV00249**
Jury Demand:	Both
Nature of Suit:	Torts: Personal Injury - Product Liability (365)
Key Nature of Suit:	Torts/Negligence; Product Liability; Personal Injury (430.85.15)
Jurisdiction:	Diversity
Cause:	28 USC 1332 Diversity-Product Liability

PARTICIPANT INFORMATION

Michael R. Lucas

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Deborah Lucas

Party Description:	as wife

Type:	Plaintiff
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Johnson & Johnson

Type:	Defendant
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Ethicon, Inc.

Type:	Defendant
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DOCKET PROCEEDINGS (63)

Entry #:	Date:	Description:	
57	04/10/2017	ORDER Granting in Part and Denying in Part Defendants' 49 Motion for Summary Judgment. The Court GRANTS Defendants' request to prohibit Plaintiffs from disclosing any expert witnesses pursuant to Rule 37(c)(1). The Court DENIES Plaintiffs' request for another deadline extension. The Court GRANTS Defendants' request for summary judgment on Count II and III of Plaintiffs' Complaint. The Court DENIES Defendants' request for summary judgment on all other Counts in the Complaint. Because the Court only grants partial summary judgment, all unexpired deadlines contained in the Amended Scheduling Order 44 are renewed. This case remains pending. Signed by Judge Harold L. Murphy on 4/10/17. (bjh) (Entered: 04/10/2017)	ViewBatch Download
	04/06/2017	Submission of 49 MOTION for Summary Judgment, to District Judge Harold L. Murphy. (bjh) (Entered: 04/06/2017)	Send Runner to Court
56	04/05/2017	REPLY to Response to Motion re 49 MOTION for Summary Judgment filed by Ethicon, Inc., Johnson & Johnson. (Norden, David) (Entered: 04/05/2017)	ViewBatch Download
55	03/23/2017	ORDER Granting Plaintiff's 53 Motion for Leave to File Matters	ViewBatch Download

		Under Seal and Orders that all of the provisionally sealed documents filed under Docket Entry 54 remain under seal. The Court will accept the response and exhibits as filed, but cautions counsel that the Court will require all future filingsto comply with the procedural guidance. Signed by Judge Harold L. Murphy on 3/23/17. (bjh) (Entered: 03/23/2017)	
54	03/22/2017	SEALED RESPONSE in Opposition re 49 MOTION for Summary Judgment , 53 MOTION for Leave to File Matters Under Seal re: 49 MOTION for Summary Judgment , 27 Consent MOTION for Protective Order filed by Michael R. Lucas. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit, # 7 Exhibit, # 8 Exhibit) (Satcher, James) Modified on 3/23/2017 (bjh). (Entered: 03/22/2017)	ViewBatch Download
53	03/22/2017	MOTION for Leave to File Matters Under Seal re: 49 MOTION for Summary Judgment , 27 Consent MOTION for Protective Order with Brief In Support by Michael R. Lucas. (Satcher, James) (Entered: 03/22/2017)	ViewBatch Download
52	03/09/2017	ORDER Granting 51 Consent Motion for Extension of Time to respond to Defendants' 49 MOTION for Summary Judgment through and including March 22, 2017. Signed by Judge Harold L. Murphy on 3/9/17. (bjh) (Entered: 03/09/2017)	ViewBatch Download
51	03/09/2017	First MOTION for Extension of Time to file response to Summary Judgment with Brief In Support by Michael R. Lucas. (Satcher, James) (Entered: 03/09/2017)	ViewBatch Download
50	02/22/2017	DEPOSITION of Clarence R. McKemie, III, M.D. taken on September 14, 2016 by Ethicon, Inc., Johnson & Johnson. (Norden, David) (Entered: 02/22/2017)	ViewBatch Download
49	02/22/2017	MOTION for Summary Judgment with Brief In Support	ViewBatch Download

		by Ethicon, Inc., Johnson & Johnson. (Attachments: # 1 Brief, # 2 Exhibit Exhibit A to Brief, # 3 Statement of Material Facts, # 4 Text of Proposed Order)(Norden, David) --Please refer to http://www.gand.uscourts.gov to obtain the Notice to Respond to Summary Judgment Motion form contained on the Court's website.-- (Entered: 02/22/2017)	
48	01/23/2017	CERTIFICATE OF SERVICE Ethicon, Inc.'s Objections and Responses to Plaintiffs' First Set of Requests for Admissions and Johnson & Johnson's Objections and Responses to Plaintiffs' First Set of Requests for Admissions by Ethicon, Inc., Johnson & Johnson.(Norden, David) (Entered: 01/23/2017)	ViewBatch Download
47	12/19/2016	ORDER approving the Parties' 46 Stipulation and extends the time in which Defendants may respond to Plaintiff's First Request for Admissions to Defendants through and including 1/23/2017. Signed by Judge Harold L. Murphy on XX/XX/2016. (dob) (Entered: XX/XX/2016)	ViewBatch Download
46	12/19/2016	STIPULATION Extending Time for Defendants Johnson & Johnson and Ethicon, Inc. to Respond to Plaintiffs' First Request for Admissions to Defendants by Ethicon, Inc., Johnson & Johnson. (Norden, David) (Entered: 12/19/2016)	ViewBatch Download
45	12/01/2016	CERTIFICATE OF SERVICE Plaintiffs' First Request for Admissions to Defendants by Michael R. Lucas.(Satcher, James) (Entered: 12/01/2016)	ViewBatch Download
44	11/30/2016	AMENDED SCHEDULING ORDER Granting 43 Motion to Amend Scheduling Order. Discovery closes 6/9/16; Prop Pretrial Order 20 days after Court's ruling on dispositive motions... See Order for details. Signed by Judge Harold L. Murphy on 11/30/16. (bjh) (Entered: 11/30/2016)	ViewBatch Download
43	11/29/2016	CONSENT MOTION For Entry Of Amended Scheduling Order re 15 Scheduling Order, with	ViewBatch Download

		Brief In Support by Michael R. Lucas. (Attachments: # 1 Exhibit A Proposed Order)(Satcher, James) Modified on 11/30/2016 to edit text to reflect pdf (bjh). (Entered: 11/29/2016)	
42	11/11/2016	CERTIFICATE OF SERVICE Defendant Johnson & Johnson's Objections and Responses to Plaintiffs' Second Set of Requests For Production and Defendant Johnson & Johnson's Objections and Responses to Plaintiffs' Second Set of Interrogatories by Johnson & Johnson.(Norden, David) (Entered: 11/11/2016)	ViewBatch Download
41	11/11/2016	CERTIFICATE OF SERVICE Defendant Ethicon, Inc.'s Objections and Responses to Plaintiffs' Second Set of Requests For Production and Defendant Ethicon, Inc's Objections and Responses to Plaintiffs' Second Set of Interrogatories to Defendants by Ethicon, Inc..(Norden, David) (Entered: 11/11/2016)	ViewBatch Download
40	10/11/2016	CERTIFICATE OF SERVICE Plaintiffs' second Request for Production of Documents to Defendants by Michael R. Lucas.(Satcher, James) (Entered: 10/11/2016)	ViewBatch Download
39	10/11/2016	CERTIFICATE OF SERVICE Plaintiffs' second Interrogatories to Defendants by Michael R. Lucas.(Satcher, James) (Entered: 10/11/2016)	ViewBatch Download
38	08/25/2016	CERTIFICATE OF SERVICE Ethicon, Inc.'s Second Amended and Supplemental Objections and Responses to Plaintiffs' First Set of Interrogatories by Ethicon, Inc..(Norden, David) (Entered: 08/25/2016)	ViewBatch Download
37	08/22/2016	Amended NOTICE to Take Deposition of Clarence R. McKemie, M.D. filed by Ethicon, Inc. (Norden, David) (Entered: 08/22/2016)	ViewBatch Download
36	08/16/2016	NOTICE to Take Deposition of Clarence R. McKemie, M.D. filed by Ethicon, Inc. (Norden, David) (Entered: 08/16/2016)	ViewBatch Download
35	07/11/2016	Amended NOTICE to Take Deposition of Michael R. Lucas filed by Ethicon, Inc., Johnson	ViewBatch Download

		& Johnson (Norden, David) (Entered: 07/11/2016)	
34	07/11/2016	Amended NOTICE to Take Deposition of Deborah Lucas filed by Ethicon, Inc., Johnson & Johnson (Norden, David) (Entered: 07/11/2016)	ViewBatch Download
33	07/08/2016	NOTICE to Take Deposition of Deborah Lucas filed by Ethicon, Inc., Johnson & Johnson (Norden, David) (Entered: 07/08/2016)	ViewBatch Download
32	07/08/2016	NOTICE to Take Deposition of Michael R. Lucas filed by Ethicon, Inc., Johnson & Johnson (Norden, David) (Entered: 07/08/2016)	ViewBatch Download
31	06/15/2016	CERTIFICATE OF SERVICE Ethicon, Inc.'s Amended and Supplemental Objections and Responses to Plaintiffs' First Set of Requests for Production by Ethicon, Inc., Johnson & Johnson.(Norden, David) (Entered: 06/15/2016)	ViewBatch Download
30	06/15/2016	CERTIFICATE OF SERVICE Ethicon, Inc.'s Amended and Supplemental Objections and Responses to Plaintiffs' First Set of Interrogatories by Ethicon, Inc., Johnson & Johnson. (Norden, David) (Entered: 06/15/2016)	ViewBatch Download
29	03/22/2016	CERTIFICATE OF SERVICE re 21 Certificate of Service by Deborah Lucas.(Satcher, James) (Entered: 03/22/2016)	ViewBatch Download
28	03/09/2016	ORDER Granting 27 Consent Motion for Confidentiality Protective Order. Signed by Judge Harold L. Murphy on 3/9/16. (bjh) (Entered: 03/09/2016)	ViewBatch Download
27	03/08/2016	Consent MOTION for Protective Order by Ethicon, Inc., Johnson & Johnson. (Attachments: # 1 Text of Proposed Order (Confidentiality and Protective Order))(Norden, David) (Entered: 03/08/2016)	ViewBatch Download
26	03/06/2016	CERTIFICATE OF SERVICE re 20 Certificate of Service, 19 Certificate of Service of Objections and Responses to Defendants' First set of Interrogatories and Defendants' First Set of Request for Production of Documents by	ViewBatch Download

		Michael R. Lucas.(Satcher, James) (Entered: 03/06/2016)	
25	03/03/2016	ORDER Granting 24 Consent Motion for Plaintiffs to have through and including March 18, 2015 within which to respond to Defendant's Interrogatories and Request for Production of Documents. Signed by Judge Harold L. Murphy on 3/3/16. (bjh) (Entered: 03/03/2016)	ViewBatch Download
24	03/02/2016	Consent MOTION for Extension of Time to Complete Discovery with Brief In Support by Michael R. Lucas. (Satcher, James) (Entered: 03/02/2016)	ViewBatch Download
23	03/02/2016	CERTIFICATE OF SERVICE of Objections and Responses to Plaintiffs' First Set of Interrogatories and Plaintiffs' First Set of Requests for Production by Johnson & Johnson.(Norden, David) (Entered: 03/02/2016)	ViewBatch Download
22	03/02/2016	CERTIFICATE OF SERVICE of Objections and Responses to Plaintiffs' First Set of Interrogatories and Objection and Responses to Plaintiffs' First Set of Requests for Production by Ethicon, Inc.. (Norden, David) (Entered: 03/02/2016)	ViewBatch Download
21	02/26/2016	CERTIFICATE OF SERVICE of Defendant Ethicon Inc.'s First Set of Interrogatories and First Set of Requests for Production of Documents to Plaintiff Deborah Lucas by Ethicon, Inc..(Norden, David) (Entered: 02/26/2016)	ViewBatch Download
20	02/03/2016	CERTIFICATE OF SERVICE of First Set of Interrogatories to Plaintiff Michael Lucas by Ethicon, Inc..(Norden, David) (Entered: 02/03/2016)	ViewBatch Download
19	02/03/2016	CERTIFICATE OF SERVICE of First Set of Requests for Production of Documents to Plaintiff Michael Lucas by Ethicon, Inc..(Norden, David) (Entered: 02/03/2016)	ViewBatch Download
18	02/02/2016	Initial Disclosures by Ethicon, Inc., Johnson & Johnson. (Norden, David) (Entered: 02/02/2016)	ViewBatch Download
17	02/01/2016	CERTIFICATE OF SERVICE Plaintiffs' First Interrogatories	ViewBatch Download

		and Production of Documents to Defendants by Deborah Lucas, Michael R. Lucas.(Satcher, James) (Entered: 02/01/2016)	
16	02/01/2016	First Initial Disclosures by Deborah Lucas, Michael R. Lucas.(Satcher, James) (Entered: 02/01/2016)	ViewBatch Download
15	02/01/2016	Scheduling ORDER Granting 14 Consent Motion for Order. Discovery closes 4/18/2017; Daubert Motions, Motions for Summary Judgment due by 5/18/2017; Final Pretrial Order to be filed w/the Court 50 days after the Court's ruling on dispositive motions. Signed by Judge Harold L. Murphy on 2/1/16. (bjh) (Entered: 02/01/2016)	ViewBatch Download
	02/01/2016	Discovery ends on 4/18/2017. (bjh) (Entered: 02/01/2016)	Send Runner to Court
14	01/31/2016	Consent MOTION for Order by Ethicon, Inc., Johnson & Johnson. (Attachments: # 1 Text of Proposed Order (Proposed Scheduling Order))(Norden, David) (Entered: 01/31/2016)	ViewBatch Download
13	01/29/2016	SCHEDULING ORDER approving 12 Joint Preliminary Report and Discovery Plan. Defendants contend that "Defendant Johnson & Johnson stated in its Answer that Plaintiffs' claims against Johnson & Johnson are barred for lack of personal jurisdiction." (Jt. Prelim. Report & Discovery Plan (Docket Entry No. 12) at 26.) The Court observes that it will not address a jurisdictional objection simply because a party raises it in a Joint Preliminary Report andDiscovery Plan or an Answer. Instead, the proper manner for presenting such an objection is via Motion. Signed by Judge Harold L. Murphy on 1/29/16. (bjh) (Entered: 01/29/2016)	ViewBatch Download
12	01/27/2016	JOINT PRELIMINARY REPORT AND DISCOVERY PLAN filed by Ethicon, Inc., Johnson & Johnson. (Norden, David) (Entered: 01/27/2016)	ViewBatch Download
11	01/21/2016	RE-FILED FROM 9 Return of Service Executed by Michael R.	ViewBatch Download

		Lucas, Deborah Lucas. Johnson & Johnson served on 1/13/2016, answer due 2/3/2016. (bjh) Modified on 1/21/2016 (bjh). (Entered: 01/21/2016)	
10	01/21/2016	ORDER Granting 7 Application for Admission Pro Hac Vice of Richard McLure Dye. Signed by Judge Harold L. Murphy on 121/16. (bjh) (Entered: 01/21/2016)	ViewBatch Download
9	01/21/2016	AFFIDAVIT of Service for Affidavit of service , as to Johnson & Johnson. (Satcher, James) (Entered: 01/21/2016)	ViewBatch Download
	01/21/2016	Clerks Certificate of Mailing to Attorney Richard McLure Dye re 10 Order on Application for Admission PHV. (bjh) (Entered: 01/21/2016)	Send Runner to Court
	01/20/2016	APPROVAL by Clerks Office re: 7 APPLICATION for Admission of Richard McLure Dye Pro Hac Vice (Application fee $ 150, receipt number 113E-6221852). Attorney Richard M. Dye added appearing on behalf of Ethicon, Inc., Johnson & Johnson (pb) (Entered: 01/20/2016)	Send Runner to Court
	01/13/2016	Refund in the amount of $150.00 has been processed, effective 1/13/2016, in response to Clerks Action on Application for Refund of Fees paid online. (kns) (Entered: 01/13/2016)	Send Runner to Court
	01/11/2016	Clerks Approval re 8 Application for Refund of Fees paid online. (mmc) (Entered: 01/13/2016)	Send Runner to Court
8	01/08/2016	Application for Refund of Fees paid online through Pay.gov for receipt number 113E-6221748. (Norden, David) (Entered: 01/08/2016)	ViewBatch Download
7	01/06/2016	APPLICATION for Admission of Richard McLure Dye Pro Hac Vice (Application fee $ 150, receipt number 113E-6221852)by Ethicon, Inc., Johnson & Johnson. (Norden, David) (Entered: 01/06/2016)	ViewBatch Download
6	12/29/2015	Clerks Notation re 2 Certificate of Interested Persons approved by Judge Harold L Murphy on XX/XX/2015. (dob) (Entered: XX/XX/2015)	ViewBatch Download
5	12/28/2015	DUPLICATE FILING WITH CASE NO. ANSWER to COMPLAINT with Jury Demand	ViewBatch Download

		by Johnson & Johnson.(Norden, David) Please visit our website at http://www.gand.uscourts.gov to obtain Pretrial Instructions. Modified on XX/XX/2015 (dob). (Entered: XX/XX/2015)	
4	12/28/2015	ANSWER to COMPLAINT with Jury Demand by Ethicon, Inc..(Norden, David) Please visit our website at http://www.gand.uscourts.gov to obtain Pretrial Instructions. (Entered: 12/28/2015)	ViewBatch Download
3	12/28/2015	ANSWER to COMPLAINT with Jury Demand by Johnson & Johnson. Discovery ends on 5/26/2016.(Norden, David) Please visit our website at http://www.gand.uscourts.gov to obtain Pretrial Instructions. (Entered: 12/28/2015)	ViewBatch Download
2	12/28/2015	Certificate of Interested Persons by Ethicon, Inc., Johnson & Johnson. (Norden, David) (Entered: 12/28/2015)	ViewBatch Download
1	12/28/2015	NOTICE OF REMOVAL with COMPLAINT., filed by Ethicon, Inc., Johnson & Johnson. (Filing fee $ 400 receipt number 113E-6209089) (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Civil Cover Sheet)(dob) Please visit our website at http://www.gand.uscourts.gov/commonly-used-forms to obtain Pretrial Instructions which includes the Consent To Proceed Before U.S. Magistrate form. (Entered: 12/28/2015)	ViewBatch Download

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IN THE SUPERIOR COURT OF FLOYD COUNTY

STATE OF GEORGIA

MICHAEL R. LUCAS and DEBORAH LUCAS, as wife, **Plaintiffs,** **v.** **JOHNSON & JOHNSON; and ETHICON, INC.** **Defendants,**	**COMPLAINT AND DEMAND FOR JURY TRIAL** **Civil Action No.:** 15CV02317-JFL 001

COMPLAINT FOR DAMAGES

Plaintiffs, MICHAEL RAYMOND LUCAS and DEBORAH LUCAS, by and through the undersigned counsel, upon information and belief, at all times hereinafter mentioned, allege as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiffs, MICHAEL R. LUCAS and DEBORAH LUCAS, are adult citizens of the State of Georgia, and resides in Silver Creek, Floyd County, Georgia.

2. 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.

3. Defendant ETHICON, INC's. registered agent of service is Corporation Process Company with a business address located at 2180 Satellite Boulevard, Suite 400, Duluth, Georgia, 30097.

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

5. Defendant JOHNSON & JOHNSON's registered agent of service is CT Corporation with a business address located at 1201 Peachtree Street, NE, Atlanta, GA 30361.

6. On information and belief, Defendant JOHNSON & JOHNSON owns all of the common stock and other ownership interests of Defendant ETHICON, INC.

7. 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.

8. On information and belief, JOHNSON & JOHNSON and ETHICON (herein after called DEFENDANTS) were the agents, representatives, joint venturers, alter egos, co-conspirators, consultants, predecessors, successors, servants or employees of each other.

9. In doing the acts alleged herein, the preceding 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 (hereinafter JOHNSON & JOHNSON and ETHICON, INC are collectively referred to as "JOHNSON & JOHNSON").

10. 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.

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

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

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

14. Venue is proper in this Court because Defendants ETHICON, INC. and JOHNSON & JOHNSON have transacted and conducted business in the State of Georgia, and/or contracted to supply goods and services within Floyd County, State of Georgia. Additionally, the surgery in which the PHYSIOMESH was used on Mr. Lucas, and occurred at Floyd Medical Center, which is located in Floyd County, Georgia.

BACKGROUND

15. This is a product liability action arising out of the injuries sustained by Michael Raymond Lucas.

16. Mr. Lucas underwent a surgical procedure involving the use of PHYSIOMESH, which caused his bowel to be punctured, after which he underwent multiple surgeries to correct his injuries, in which he suffered sepsis and other infections.

17. The Defendants were responsible for researching, designing, developing, testing, manufacturing, packaging, labeling, marketing, advertising, promoting, distributing, selling and/or making available PHYSIOMESH, which are medical devices used during laparoscopic recurrent ventral incisional hernia repair surgery.

18. Mr. Lucas is a fifty-nine (59) year old husband of Plaintiff, Deborah Lucas.

19. On December 4, 2013, Mr. Lucas underwent laparoscopic recurrent ventral incisional hernia repair with mesh at Floyd Medical Center in Rome, Georgia. During Mr. Lucas' hernia repair Dr. McKemie implanted a Physiomesh 20 x 25 cm under the laparoscopic approach. (*see Exhibit 1*)

20. Prior to undergoing surgery, Mr. Lucas was not warned of the risk that the use of PHYSIOMESH could cause injury.

21. During the next few days Mr. Lucas complained of multiple problems, i.e. being bloated, gassy, nauseated, and difficulty urinating. (*see Exhibit 1*)

22. On or about December 13, 2013, Mr. Lucas was noted to have some fluid coming from his midline site and a few staples were removed, and he had a large volume of liquid brown, what apparently was stool draining out through his incision. (*see Exhibit 1*)

23. Mr. Lucas subsequently was taken back to the operating room, and was found to have a focal perforation of the small bowel with contamination under the mesh, caused by the Physiomesh. (*see Exhibit 1*)

24. The Physiomesh was so sharp the Plaintiff's small bowel was perforated, and its contents spilled into his abdomen. The Physiomesh was completely removed. He had a small bowel resection. (*see Exhibit 1*)

25. In April 2014, Mr. Lucas presented to MD Brock in Rome, Georgia for further treatment. (*see Exhibit 2*)

26. By May 2014, Mr. Lucas had stomach swelling, and was admitted to the Emergency Room at Floyd Medical Center.

27. Mr. Lucas was discharged from Floyd Medical Center on May 19, 2014, and on May 26, 2014 Mr. Lucas returned to the Emergency Room with complaints of stomach swelling, and underwent surgery again.

28. In September 2014, MD Brock said that Mr. Lucas was hernia free.

29. Mr. Lucas followed up with MD Vahnavisinivash, in which she reported a five (5) inch split in Mr. Lucas' stomach.

30. Mr. Lucas was scheduled for December 5, 2014 to undergo surgery in an attempt to rebuild Mr. Lucas' stomach.

31. At the time of the laparoscopic recurrent ventral incisional hernia repair, Mr. Lucas was fifty-seven (57) years old, with a future life expectancy of 23 years (to age 80).

32. The use of the PHYSIOMESH during his laparoscopic recurrent ventral incisional hernia repair was the foundation of injuries that Mr. Lucas endured, which eventually led to a total reconstruction of Mr. Lucas' stomach.

CAUSES OF ACTION

COUNT I
AS TO THE DEFENDANTS
STRICT LIABILITY-FAILURE TO WARN

33. Plaintiffs hereby incorporate all preceding paragraphs as if fully set forth herein.

34. At all times relevant to the suit, Defendants engaged in the business of designing, manufacturing, testing, marketing, labeling and placing into the stream of commerce Physiomesh for sale to, and use by, members of the public.

35. At all times relevant to the suit, the dangerous propensities of Physiomesh were known to Defendants, or were reasonably and scientifically knowable to Defendants by appropriate research and testing by known methods, at the time they distributed, supplied, or sold the product.

36. The Physiomesh manufactured by Defendants reached Plaintiffs' without substantial change and was used as directed.

36. Defendants marketed the Physiomesh in ways which were misleading in that Defendants overstated the safety and efficacy of the Physiomesh and understated its risks.

37. The Physiomesh was defective and unreasonably dangerous in that the labeling was insufficient to adequately warn physicians and users of the increased risk of movement and perforation of organs.

38. Physiomesh was used to repair Plaintiff's abdominal hernia. Plaintiff immediately has complications following surgery, and MD McKemie decided to re-operate nine (9) days later.

39. Upon visual inspection MD McKemie discovered that the Physiomesh had eroded and punctured into the Plaintiff's small bowel causing the contents to spill into his abdominal cavity. This caused Plaintiff to become septic.

40. The Physiomesh was stiff, and had sharp edges that caused Plaintiff's injuries.

41. Physiomesh is a type II medical device, meaning that it was not tested by the FDA, because it was represented to be substantially similar to other surgical meshes, including Prolene Mesh. Prolene Mesh has caused injuries similar to Plaintiff's injuries, and is the subject of FDA recalls and other actions.

42.. As a direct and proximate result of the actions and inactions of the Defendants as set forth above, Plaintiff was surgically treated with the Physiomesh and Plaintiffs have suffered personal injuries, economic and non-economic damages including pain and suffering.

43. Defendants' actions and omissions as identified in the Complaint show that Defendants acted maliciously and/or intentionally disregarded the Plaintiffs' rights so as to warrant the imposition of punitive damages.

COUNT II
AS TO THE MANUFACTURER DEFENDANTS STRICT PRODUCTS LIABILITY - DESIGN DEFECT

44. Plaintiffs hereby incorporate by reference all preceding paragraphs as if fully set forth herein.

45. Defendants each and/or all are the manufacturer, designer, distributer, seller and supplier of the Physiomesh, and sold the Physiomesh in the course of their business.

46. The Physiomesh that was manufactured, designed, sold, marketed, distributed, supplied and/or placed into the stream of commerce by Defendants was expected to and did reach the consumer without any alterations or changes.

47. The Physiomesh utilized during Plaintiff's surgery was defective in design or formulation in at least the following respects:

(a) When it left the hands of the Defendants, the medical device was unreasonably dangerous to an extent beyond that which could reasonably be contemplated by Plaintiff or his physicians;

(b) Defendants sis not conduct a reasonable inspection of the Physiomesh;

(c) Any benefit of the medical device was outweighed by the serious and undisclosed risks of its use when used as the Defendants intended;

(d) There were safer alternatives that did not carry the same risks and dangers that Defendants' Physiomesh had;

(e) There are no patients for whom the benefits of Physiomesh outweighed the risks;

(f) There are no patients for whom the Physiomesh is a safer and more efficacious medical device than other medical device products in its class;

(g) The Physiomesh utilized during Plaintiff's surgery was defective at

the time it was distributed by the Defendants or left its control; and/or

(h) The Physiomesh used on Plaintiff had sharp edges and points that caused Plaintiff's injuries.

48. The foreseeable risks associated with the design of the Physiomesh include, but are not limited to, the fact that the design of the Physiomesh is more dangerous than a reasonably prudent consumer would expect when used in an intended or reasonably foreseeable manner, and/or did not have the claimed benefits.

49. The defective and unreasonably dangerous design and marketing of the Physiomesh was a direct, proximate and producing cause of Plaintiffs' injuries. Under strict products liability theories set forth in the ALI's Restatement of Torts adopted by this jurisdiction, Defendants are liable to Plaintiffs for all damages claimed in the case.

50. As a direct, legal, proximate, and producing result of the defective and unreasonably dangerous condition of the Physiomesh, Plaintiffs have suffered personal injuries, economic and non-economic damages, including pain and suffering.

51. Defendants' actions and omissions as identified in the Complaint show that Defendants acted maliciously and/or intentionally disregarded the Plaintiffs' rights so as to warrant the imposition of punitive damages.

COUNT III
AS TO THE MANUFACTURER DEFENDANTS NEGLIGENCE

52. Plaintiffs hereby incorporate by reference all of the above allegations as if fully set forth herein.

53. Defendants owed a duty to the general public and specifically to Plaintiffs to exercise reasonable care in the design, study, development, manufacture, promotion, sale, labeling, marketing and distribution of the Physiomesh at issue in the lawsuit.

54. Defendants breached their duty and failed to exercise reasonable care in developing, testing, designing, inspecting and manufacturing of the Physiomesh because it was capable of causing serious personal injuries, such as suffered by Plaintiffs, during foreseeable use.

55. Defendants breached their duty and also failed to exercise reasonable care in the marketing of Physiomesh because Defendants failed to warn, that as designed, the Physiomesh was capable of causing serious personal injuries, such as suffered by Plaintiffs, during foreseeable use.

56. Defendants breached their duty and also failed to exercise ordinary care in the labeling of the Physiomesh and failed to issue to consumers and/or their health care provider's adequate warnings of the risk of serious bodily injury due to the use of the Physiomesh. Moreover, Defendants over-promoted the benefits of the Physiomesh for minimally invasive laparoscopic surgery in patients suffering from hernia illness.

57. Defendants breached their duty and were negligent by, but not limited to, the following actions, misrepresentations, and omissions toward Plaintiffs:

(a) In disseminating information to Plaintiff and his physicians that was negligently and materially inaccurate, misleading, false, and unreasonably dangerous to patients such as Plaintiff;

(b) Failing to conduct adequate pre-clinical and clinical testing and adequate

post-marketing surveillance to determine the safety of the Physiomesh; and

(c) In designing, manufacturing, and placing into the stream of commerce a product which was unreasonably dangerous for its reasonably foreseeable use, which Defendants knew or should have known could cause injury to Plaintiff.

58. Despite the fact that Defendants knew or should have known that the Physiomesh posed a serious risk of bodily harm to consumers and/or did not provide any additional benefits, Defendants continued to manufacture and market the Physiomesh for use by consumers.

59. Defendants knew or should have known that consumers, including Plaintiffs, would foreseeably suffer injury as a result of Defendants' failure to exercise ordinary care as described above.

60. Defendants' failure to exercise reasonable care in the design, marketing, warnings, labeling, and/or manufacturing of the Physiomesh was a proximate cause of the Plaintiffs' personal injuries, economic and non-economic damages, including pain and suffering.

61. Defendants' conduct as described above, including but not limited to their failure to adequately test and review medical and scientific studies applicable to products similar to the Physiomesh, to provide adequate warnings, and its continued manufacture, sale and marketing of the product when they knew or should have known of the serious health risks it created, evidences actions and/or intentional disregard of the rights of the Plaintiffs so as to warrant the imposition of punitive damages.

COUNT IV
AS TO THE MANUFACTURER DEFENDANTS NEGLIGENT MISREPRESENTATION AND/OR FRAUD

62. Plaintiffs hereby incorporate by reference all of the above allegations as if fully set forth herein.

63. Defendants represented that the Physiomesh was just as safe or safer, and as effective or more effective, than other surgical alternatives, and had additional benefits compared to other surgical alternatives available on the market.

64. Defendants made these misrepresentations and actively concealed adverse information at a time when the Defendants knew, or should have known, that the Physiomesh had defects, dangers, and characteristics that were other than what Defendants had represented to Plaintiffs, his physicians, and the health care industry generally.

65. Defendants negligently and/or intentionally misrepresented or omitted the information in the product labeling, promotions and advertisements, and instead labeled promoted and advertised the product as safer and more effective than other types of surgical alternatives and understated the risk of disseminating occult malignancies associated with the Physiomesh.

66. The aforementioned misrepresentations were untrue and misleading.

67. Defendants knew or should have known that these representations were false and made the representations with the intent that Plaintiffs and/or his treating physicians would rely on them, leading to the use of the Physiomesh.

68. At the time of Defendants' fraudulent misrepresentations, Plaintiffs and/or his treating physicians were unaware of the falsity of the statements being made and believed them to be true. Plaintiffs and/or his treating physicians justifiably relied on and/or were induced by the

misrepresentations and/or active concealment and relied on the absence of safety information, which Defendants did suppress, conceal or failed to disclose, to Plaintiffs' detriment.

69. As a direct and proximate result of the fraudulent acts and omissions, suppression and misrepresentation of Defendants, Plaintiffs have suffered personal injuries, economic and noneconomic damages, including pain and suffering.

70. Defendants' actions and omissions as identified in the Complaint demonstrate malicious actions and/or intentional disregard of the Plaintiffs' rights so as to warrant the imposition of punitive damages.

COUNT V
AS TO THE MANUFACTURER DEFENDANTS
BREACH OF EXPRESS WARRANTY

71. Plaintiffs incorporate by reference each preceding paragraph as though set forth fully at length herein.

72. Defendants expressly warranted, through their direct-to-consumer marketing, labeling, and representations by their sales representatives, that the Physiomesh was a safe and effective medical device. The safety and efficacy of the Physiomesh constitutes a material fact in connection with the marketing, promotion, and sale of the Physiomesh.

73. The Physiomesh manufactured and sold by Defendants did not conform to these express representations because it caused serious injury to consumers when utilized in the recommended manner.

74. As a direct and proximate result of Defendants' breach of warranty, Plaintiffs have suffered harm, damages, economic loss, and wrongful death.

75. Defendants' actions and omissions as identified in the Complaint demonstrate malicious actions and/or intentional disregard of Plaintiffs' rights so as to warrant the imposition of punitive damages.

COUNT VI
AS TO THE MANUFACTURER DEFENDANTS BREACH OF IMPLIED WARRANTY

76. Plaintiffs incorporate by reference each preceding paragraph as though set forth fully at length herein.

77. At the time that the Defendants researched, developed, designed, tested, manufactured, inspected, labeled, distributed, marketed, promoted, sold, and/or otherwise released the Physiomesh into the stream of commerce, Defendants knew of the use for which the Physiomesh was intended and impliedly warranted the product to be of merchantable quality and safe for such use.

78. Defendants breached their implied warranties of the Physiomesh product sold to Plaintiff's Decedent and used by his health care providers because the product was not fit for its common, ordinary, and intended use.

79. As a direct, foreseeable and proximate result of Defendants' breaches of implied warranties, Plaintiff has suffered grievous bodily injury. Plaintiffs have suffered consequential economic and other losses, as described above, when Plaintiff's surgeons operated on him using the Physiomesh in reasonable reliance upon the implied warranties.

80. Defendants' actions and omissions as identified in the Complaint demonstrate malicious actions and/or intentional disregard of Plaintiffs' rights so as to warrant the imposition of punitive damages.

COUNT VII
AS TO THE MANUFACTURER DEFENDANTS FRAUDULENT CONCEALMENT

81. Plaintiffs hereby incorporate by reference all of the above allegations as if fully set forth herein.

82. At all times during the course of dealings between Defendants and Plaintiffs, and/or his healthcare providers, and/or the FDA, Defendants misrepresented the safety of Physiomesh for its intended use. (*see Exhibit 3*)

83. Defendants knew or were reckless in not knowing that its representations were false.

84. In representations to Plaintiffs, and/or his healthcare providers, and/or the FDA, Defendants fraudulently concealed and intentionally omitted the following material information:

(a) that the Physiomesh was not as safe or effective as other forms of hernia surgery;

(b) that Defendants failed to investigate, research, study and consider, fully and adequately, that the small bowel of a recipient would be perforated by the Physiomesh;

(c) that Defendants failed to investigate, research, study and define, fully and adequately, the safety profile of Physiomesh;

(d) that Defendants failed to include an adequate warning about puncturing recipients Small bowel;

(e) that Defendants failed to adequately instruct physicians that the Physiomesh would puncture Plaintiff's small bowel; and

(f) that there is an increased risk of puncturing internal organs, including small bowel, associated with the use of the Physiomesh.

85. Defendants were under a duty to disclose to Plaintiffs, and his physicians, hospitals, healthcare providers, and/or the FDA the defective nature of the Physiomesh, including but not limited to the heightened risks of puncturing organs, including the small bowel.

86. Defendants had sole access to material facts concerning the defective nature of the product and its propensity to cause serious and dangerous side effects, and hence, cause damage to persons who used the Physiomesh, including Plaintiffs, in particular.

87. Defendants' concealment and omissions of material facts concerning, inter alia, the safety of the Physiomesh were made purposefully, willfully, wantonly, and/or recklessly, to mislead Plaintiffs, and his physicians, hospitals and healthcare providers into reliance and use of the Physiomesh, and to cause them to purchase and/or use the Physiomesh.

88. Defendants knew that Plaintiffs and his physicians, hospitals, healthcare providers, and/or the FDA had no way to determine the truth behind Defendants' concealment and omissions, and that these included material omissions of facts surrounding the Physiomesh, as set forth herein.

89. Plaintiffs and his doctors, healthcare providers, and/or hospitals reasonably relied on facts revealed which negligently, fraudulently and/or purposefully did not include facts that were concealed and/or omitted by Defendants.

90. As a result of the foregoing acts and omissions Plaintiffs have suffered severe physical pain and mental anguish, and wrongful death.

91. As a result of the foregoing acts and omissions, Plaintiffs required health care and services and incurred medical, health, incidental and related expenses.

COUNT VIII
AS TO THE MANUFACTURER DEFENDANTS PUNITIVE DAMAGES

92. Plaintiffs hereby incorporate by reference all of the above allegations as if fully set forth herein.

93. At all material times, the Manufacturer Defendants knew or should have known that the Physiomesh was inherently dangerous.

94. Despite such knowledge, the Defendants continued to aggressively market the Physiomesh to hospitals, physicians and consumers, including Plaintiffs, without disclosing its dangerous propensity to perforate internal organs when there existed safer alternative surgical procedures.

95. Despite Defendants' knowledge of the Physiomesh's defective and unreasonably dangerous nature, Defendants continued to design, develop, manufacture, label, package, promote, market, sell and distribute it so as to maximize sales and profits at the expense of the health and safety of the public, including Plaintiffs, in conscious disregard of the foreseeable harm caused by the Physiomesh.

96. Defendants' conduct as described above, including, but not limited to, its failure to adequately test the product, to provide adequate warnings, and its continued manufacture, sale and marketing of the product when it knew or should have known of the serious health risks created, was intentional, willful wanton, oppressive, malicious, and reckless, evidencing such an

entire want of care as to raise the presumption of a conscious indifference to the consequences in that Defendants acted only out of self-interest and personal gain.

97. The conduct of Defendants, as set forth herein, above was intentional, willful, wanton, oppressive, malicious, and reckless, evidencing such an entire want of care as to raise the presumption of a conscious indifference to the consequences in that Defendants acted only out of self-interest and personal gain. Such conduct evidences a specific intent to cause harm to Plaintiffs as provided under O.C.G.A. § 51-12-5.1. Accordingly, punitive damages should be imposed against Defendants pursuant to O.C.G.A. § 51-12-5.1 and other applicable laws, to punish and deter each Defendant from repeating or continuing such unlawful conduct.

COUNT IX
LOSS OF CONSORTIUM

98. Plaintiff, Deborah Lucas, is and was at all times relevant to the case, and is the wife of Plaintiff, Michael Raymond Lucas.

99. She brings this loss of consortium action for past, present and future loss of support, services, companionship, love, and affection caused by the serious physical injury to her husband as previously alleged.

100. Plaintiff, Deborah Lucas, has suffered damages for loss of consortium in the amount of $500,000.

COUNT X
LOSS OF WAGES, PAIN, AND SUFFERING

101. Plaintiff was permanently disabled following the surgery.

102. Plaintiff has a work life expectancy of fifteen (15) years.

103. Plaintiff is entitled for disability of his body in the amount of $300,000.

104. Plaintiff is entitled for loss of income in the amount of $360,000.

105. Plaintiff is entitled to pain and suffering until the time of filing this suit, and will continue to endure pain and suffering for the rest of his life in the amount of $28,000,000.

106. Plaintiff has incurred, and will continue to incur medical expenses in an amount in excess of $1,000,000.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment against each defendant individually as follows:

(a) That process issue according to law;

(b) That Defendants be served with a copy of this Complaint For Damages and show cause why the prayers for relief requested herein should not be granted;

(c) That Plaintiffs be granted a trial by jury in the matter;

(d) That the Court enter a judgment against Defendants for disability in the amount of $300,000.;

(e) That the Court enter a judgment against Defendants for loss of income in the amount of $360,000.;

(f) That the Court enter a judgment against the Defendants for pain and suffering in the amount of $28,000,000.;

(g) That the Court enter a judgment against the Defendants for all special damages allowable to Plaintiffs in the amount of $1,000,000.;

(h) That the Court enter a judgment against the Defendants for loss of consortium in the amount of $500,000.;

(i) That the Court enter a judgment against Defendants serving to award Plaintiffs punitive damages under the provisions of O.C.G.A. § 51-12-5.1;

(j) That the Court enter a judgment against Defendants for all other relief sought by Plaintiffs under the Complaint;

(k) That the costs of the action be cast upon Defendants; and

(l) That the Court grant Plaintiffs such further relief which the Court deems just and appropriate.

Respectfully submitted this 2nd day of December, 2015.

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