UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE—KNOXVILLE DIVISION

MARTHA KAREN JONES, Plaintiff,	(	**CASE NO.:**
v.	(	SECTION:
DAVOL INC. and C.R. BARD INC., Defendants	(	MAG. JUDGE:
	(	**JURY TRIAL DEMAND**

COMPLAINT

Plaintiff, Martha Karen Jones, by and through the undersigned counsel, on behalf of herself, upon information and belief, at all times hereinafter mentioned, alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332, because the amount in controversy as to the Plaintiff exceeds $75,000.00, exclusive of interest and costs, and because there is complete diversity of citizenship between the Plaintiff and the Defendants.

2. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391, because a substantial part of the events or omissions giving rise to the claim occurred in this District.

3. This Court has personal jurisdiction over the Defendants because they actively sell, market and promote their product, Bard Dulex, to physicians and consumers in this state on a regular and consistent basis.

Parties

1. Plaintiff MARTHA KAREN JONES ("Plaintiff"), is a citizen and resident of the County of Knox State of Tennessee

2. Defendant DAVOL INC. (*hereinafter* "DAVOL") is a corporation that is incorporated under the laws of the State of Rhode Island. DAVOL has its principal place of business in the State of Rhode Island. It manufactures the Dulex hernia mesh and is located at 100 Crossings Boulevard, Warwick, Rhode Island. DAVOL focuses its business on products in key surgical specialties, including hernia repair, hemostasis, orthopedics, and laparoscopy.

3. Defendant C. R. BARD INC. (*hereinafter* "BARD") is a corporation that is incorporated under the laws of the State of New Jersey and located at 730 Central Ave. New Providence, N.J. 07974-1139. It is the corporate parent/stockholder of DAVOL and participates in the manufacture and distribution of the Dulex mesh. It also manufactures and supplies DAVOL with material that forms part of the Dulex hernia mesh. BARD, at all times relevant, did substantial and continuous business in the State of Rhode Island.

Jurisdiction

4. This Court has original jurisdiction pursuant to 28 U.S.C § 1332(d)(2)(A) in that there exists complete diversity of citizenship between the parties and the amount in controversy, exclusive of interest and costs, exceeds Seventy-Five Thousand Dollars ($75,000.00)

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(a). A substantial portion of the events and omissions giving rise to this action occurred in this district.

6. This Court has personal jurisdiction over each of the parties as the defendants actively designed, manufactured, marketed, sold, and / or distributed their hernia mesh product in Tennessee. The Defendants placed the subject hernia mesh product into the channels of commerce with knowledge that a substantial number of such products would be used in Tennessee. The Defendants regularly conduct and solicit business in the state of Tennessee and derive substantial revenue from goods used and consumed in Tennessee.

Facts

7. The Dulex hernia mesh is designed, manufactured and distributed by BARD and their subsidiary, DAVOL (*hereinafter* collectively "Defendants").

8. Defendants designed, manufactured and distributed the Dulex Mesh (device that was inserted into Plaintiff's body.

9. Defendants, through its agents, servants, and employees, participated in the manufacture and delivery of the Dulex Mesh that was inserted into Plaintiff's body.

10. Dulex Mesh is a dual-sided ePTFE patch for ventral hernia repair marketed by Defendants, as a mesh to be used in repairing hernias and to provide extra reinforcement to the hernia defect.

11. Defendants' Dulex Mesh product is a dual-sided ePTFE mesh constructed of a microporous side and a microporous side.

12. Dulex Mesh is designed, indicated, and utilized for permanent implantation in the human body, in the intraabdominal space between the subcutaneous tissue and intestines.

13. Defendants failed to warn or notify doctors and consumers of the severe and life-threatening risks associated with the ePTFE mesh.

14. The ePTFE mesh used in the manufacture of the Dulex Mesh, which was implanted into Plaintiff, and is not suited for implantation into the human body due to its material utilized and other design features. These design aspects lead to adverse tissue reactions in the body, which directly lead to complications.

15. The Dulex Mesh implanted in Plaintiff was designed, manufactured, sold and distributed by Defendants to be used by surgeons for hernia repair surgeries and was further

represented by Defendants to be an appropriate, cost-effective, and suitable product for such purpose.

16. The ePTFE mesh used in the manufacture the Dulex Mesh, which was implanted into Plaintiff, is not suited for implantation into the human body due material utilized and other design features. These design aspects lead to adverse tissue reactions in the body, which directly lead to complications.

17. The Dulex Mesh implanted in Plaintiff was designed, manufactured, sold and distributed by Defendants to be used by surgeons for hernia repair surgeries and was further represented by Defendants to be an appropriate, cost-effective and suitable product for such purpose.

18. The ePTFE mesh used in the manufacture of the Dulex Mesh, which was implanted into Plaintiff, is unreasonably dangerous, defective, and negligently designed in the following ways:

a. The mesh allows bacteria to enter and hide from the host defenses designed to eliminate them. The bacteria can secrete an encasing slime (biofilm) which further serves to protect them from destruction by white blood cells and macrophages.

b. The mesh leaches compounds and chemicals which are toxic to tissue which enhances the inflammatory reaction and the intensity of fibrosis.

c. The mesh flakes and fissures, and this leads to and/or exacerbates degradation and release of toxic compounds. This enhances the inflammatory and fibrotic reactions to the materials.

d. With loss of mesh due to degradation, the surface area is greatly increased, thus providing greater areas for bacterial adherence and more elution of toxic

compounds from the mesh, and also the freed toxic mesh itself, all of which increases the inflammatory reaction and intensity of fibrosis.

e. The mesh was known to shrink 30-50%.

f. Predominate infection/inflammation was noted in other predicate devices.

g. Surgical mesh is subject to oxidation by substances produced during the inflammatory reaction which causes degradation and loss of compliance, which further enhances the inflammatory response and scarification.

h. Mesh porosity is important for tissue ingrowth, with low porosity decreasing tissue incorporation. Porosity also affects the inflammatory and fibrotic reaction. With mechanical stress the porosity of the pores is decreased.

i. The Pore size was inadequate.

j. The mesh is known to depolymerize, undergo oxidative degradation by free radicals, and stress crack after implantation in the human body.

k. The large surface area promotes wicking of fluids and bacteria and is a "bacterial super highway," providing a safe haven for bacteria.

l. Common complications include restriction of abdominal wall mobility and local wound disturbances. Often failures include persistent and active inflammatory processes, irregular or low formation of scar tissue and unsatisfying integration of the mesh in the regenerative tissue area.

m. Fibrotic bridging results from the inadequate pore size of the Dulex Mesh.

n. The mesh shrinkage rates are the largest as a microporous mesh. Due to the microporous design, wound contraction results in mesh shrinkage

19. A malfunction of this device can lead to nerve entrapment and damage, fistulae

formation, erosion of mesh into organs, and chronic pain, as well as other chronic and debilitating conditions.

20. Upon information and belief, Defendants were aware of the high degree of complication and failure rate associated with Dulex Mesh.

21. Upon information and belief, Defendants were aware of the defects in the manufacture and design of Dulex Mesh.

22. Upon information and belief, Defendants were and are aware of the defects in the manufacture and design of Dulex Mesh and chose, and continue to choose, not to issue a recall of these products, including the Dulex Mesh implanted in the Plaintiff, in the face of a high degree of complication and failure rates.

23. Upon information and belief, Defendants manipulated, altered, skewed, slanted, misrepresented, and/or falsified pre-clinical and/or clinical studies to bolster the perceived performance of Dulex Mesh.

24. Upon information and belief, Defendants paid doctors, surgeons, physicians, and/or clinicians to promote Dulex Mesh, but did not readily disclose this information.

25. Defendants failed to implement adequate procedures and systems to report, track, and evaluate complaints and adverse events.

26. Defendants marketed Dulex Mesh to the medical community and to patients as safe, effective, reliable, medical devices for the treatment of hernia repair, and as safer and more effective as compared to the traditional products and procedures for treatment, and other competing mesh products.

27. Defendants failed to perform or rely on proper and adequate testing and research in order to determine and evaluate the risks and benefits of Dulex Mesh.

28. Defendants failed to design and establish a safe, effective procedure for removal of Dulex Mesh; therefore, in the event of a failure, injury, or complications it is difficult to safely remove Dulex Mesh.

29. Defendants provided incomplete, insufficient, and misleading information to physicians in order to increase the number of physicians using Dulex Mesh for the purpose of increasing their sales. By so doing, Defendants caused the dissemination of inadequate and misleading information to patients, including the Plaintiff.

30. The Dulex Mesh was utilized and implanted in a manner foreseeable to Defendants.

31. The Dulex Mesh implanted into Plaintiff was in the same or substantially similar condition as when it left the possession of the Defendants, and in the condition directed by the Defendants.

32. On or about June 13, 2008, Plaintiff underwent surgery for repair of an abdominal hernia. A Dulex Mesh**,** Reference number 0115191 and Lot number *BRSB8038* was implanted to repair the hernia defect.

33. At the time of her operation, Plaintiff was not informed of, and had no knowledge of the complaints, known complications and risks associated with Dulex Mesh.

34. Plaintiff was never informed by Defendants of the defective and dangerous nature of Dulex Mesh.

35. At the time of implant, neither Plaintiff nor Plaintiff's physicians were aware of the defective and dangerous condition of Dulex Mesh.

36. Subsequent, in September 2012, Plaintiff underwent an additional surgery to remove the Dulex Mesh, which was infected. Plaintiff subsequently endured additional surgeries to treat mesh-related complications, including surgeries on May 12, 2017. Plaintiff was injured

severely and permanently.

37. Plaintiff has suffered and will continue to suffer physical pain and mental anguish.

38. Plaintiff has also incurred substantial medical bills and has suffered loss of other monies due to the defective hernia patch that was implanted in her body.

39. Despite diligent investigation by Plaintiff into the cause of her injuries, including consultations with her medical providers, the nature of her injuries and damages, and their relationship to the Dulex Mesh was not discovered, and through reasonable care and diligence could not have been discovered until a date within the applicable statute of limitations for filing Plaintiff's claims. Therefore, under appropriate application of the discovery rule, Plaintiff's suit was filed well within the applicable statutory limitations period.

40. Plaintiff did not learn of Defendants' wrongful conduct until approximately July 19, 2017. Furthermore, in the existence of due diligence, Plaintiff could not have reasonably discovered the Defendants' wrongful conduct, including, but not limited to, the defective design and/or manufacturing of the product until a date within the statute of limitations. Therefore, under appropriate application of the discovery rule, Plaintiff's suit was filed well within the statutory limitations period.

COUNT I
Negligence

41. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

42. Defendants DAVOL and BARD were negligent to Plaintiff in the following respects:

43. DAVOL and BARD, at all times mentioned, had a duty to properly manufacture, test, inspect, package, label, distribute, market, examine, maintain, supply, provide proper warnings and prepare for use the Dulex Mesh Hernia Patch.

44. DAVOL and BARD, at all times mentioned, knew or in the exercise of reasonable care should have known, that the Dulex Mesh Hernia Patches were of such a nature that they were not properly manufactured, tested, inspected, packaged, labeled, distributed, marketed, examined, sold, supplied, prepared and/or provided with the proper warnings, and were unreasonably likely to injure Dulex Mesh users.

45. DAVOL and BARD so negligently and carelessly designed, manufactured, tested, failed to test, inspected, failed to inspect, packaged, labeled, distributed, recommended, displayed, sold, examined, failed to examine and supplied the Dulex Mesh Hernia Patch, that they were unreasonably dangerous and unsafe for the use and purpose for which it was intended.

46. DAVOL and BARD were aware of the probable consequences of the Dulex Mesh Hernia Patch. DAVOL and BARD knew or should have known the Dulex Mesh would cause serious injury and they failed to disclose the known or knowable risks associated with the Dulex Mesh Hernia Patch. Furthermore, DAVOL and BARD willfully and deliberately failed to avoid those consequences, and in doing so, DAVOL and BARD acted in conscious disregard of the safety of Plaintiff.

47. Defendants DAVOL and BARD owed a duty to Plaintiff to adequately warn her and her treating physicians of the risks of degradation, infection, contracture, shrinkage, breakage, separation, tearing and splitting associated with the Dulex Mesh and the resulting harm and risk it would cause patients.

48. As a direct and proximate result of the duties breached, the Dulex Mesh used in Plaintiff's hernia repair surgery failed, resulting in much pain and suffering, mental anguish, doctor visits, subsequent procedures, and hefty medical bills.

49. As a direct and proximate result of DAVOL's and BARD's negligence, Plaintiff suffered severe pain, injuries and damages.

50. As a direct and proximate result of DAVOL's and BARD's conduct, Plaintiff has suffered and will continue to suffer great pain and mental anguish.

51. DAVOL's and BARD's conduct in continuing to market, sell and distribute the Dulex Mesh after obtaining knowledge that the products were failing and not performing as represented and intended, showed complete indifference to or a conscious disregard for the safety of others, justifying an award of additional damages for aggravating circumstances in such a sum which will serve to deter DAVOL, BARD and others from similar conduct in the future.

Wherefore, Plaintiff requests a judgment against DAVOL and BARD for damages in a sum to confer jurisdiction upon this Court together with interest on that amount at the legal rate from the date of judgment until paid, for court costs and for other such relief this Court deems just and appropriate.

COUNT II
Strict Product Liability

52. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

53. Defendants DAVOL and BARD are strictly liable to Plaintiff in the following respects:

54. DAVOL and BARD designed, manufactured, assembled, distributed, conveyed and/or sold the Dulex Mesh for hernia repair surgery.

55. At all times mentioned, the Dulex Mesh was substantially in the same condition as when it left the possession of DAVOL.

56. The Dulex Mesh implanted into Plaintiff was being used in a manner reasonably anticipated at the time it was implanted in her by her surgeon.

57. The Dulex Mesh Hernia Patch, like the one found in Plaintiff, at the time they left the possession of DAVOL and BARD, were inherently dangerous for their intended use and were unreasonably dangerous products which presented and constituted an unreasonable risk of danger and injury to Plaintiff as follows:

a. The Dulex Mesh was sold in a defective condition by design and manufacture;

b. The Dulex Mesh as designed and manufactured was unsafe to Plaintiff;

c. The Dulex Mesh as designed and manufactured was unreasonably dangerous to Plaintiff;

d. The Dulex Mesh did not perform safely as an ordinary consumer/patient, like Plaintiff, would expect;

e. The Dulex Mesh as designed and manufactured was unsafe for its intended use;

f. DAVOL and BARD failed to warn the end user about the dangers and risks of the product;

g. DAVOL and BARD knew the component parts of the Dulex Mesh as implemented through design and/or manufacture could cause injury to the end user;

h. Failing to avoid migration of the Dulex Mesh and/or its components from the initial site of the hernia repair surgery

i. Any other acts or failures to act by DAVOL or BARD regarding the studying, testing, designing, developing, manufacturing, inspecting, producing, advertising, marketing, promoting, distributing, and/or sale of Dulex Mesh Hernia Patches for hernia repair surgery as will be learned during discovery.

58. DAVOL's and BARD's conduct in continuing to market, sell and distribute the Dulex Mesh after obtaining knowledge that the products were failing and not performing as

represented and intended, showed complete indifference to or a conscious disregard for the safety of others justifying an award of additional damages for aggravating circumstances in such a sum which will serve to deter DAVOL, BARD and others from similar conduct in the future.

Wherefore, Plaintiff requests a judgment against DAVOL and BARD for damages in a sum to confer jurisdiction upon this Court together with interest on that amount at the legal rate from the date of judgment until paid, for court costs and for other such relief this Court deems just and appropriate.

COUNT III
Negligent Infliction of Emotional Distress

59. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

60. Defendants DAVOL and BARD are liable to Plaintiff for the negligent infliction of emotional distress in the following respect:

61. Plaintiff suffered severe emotional distress, which was a result of Defendants' negligent conduct in studying, designing, developing, testing, inspecting, manufacturing, producing, advertising, marketing, promoting, distributing, and/or selling of the Dulex Mesh for hernia repair surgery.

62. Plaintiff suffered severe emotional distress, which was a result of DAVOL's and BARD's negligent conduct in failing to adequately and safely design and construct an effective and safe Dulex Mesh for hernia repair surgery.

63. Therefore, DAVOL and BARD are liable to Plaintiff.

64. DAVOL's and BARD's conduct in continuing to market, sell and distribute the Dulex Mesh after obtaining knowledge that the products were failing and not performing as represented and intended, showed complete indifference to or a conscious disregard for the safety

of others justifying an award of additional damages for aggravating circumstances in such a sum which will serve to deter DAVOL, BARD and others from similar conduct in the future.

Wherefore, Plaintiff requests a judgment against DAVOL and BARD for damages in a sum to confer jurisdiction upon this Court together with interest on that amount at the legal rate from the date of judgment until paid, for court costs and for other such relief this Court deems just and appropriate.

COUNT IV
Intentional Infliction of Emotional Distress

65. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

66. Defendants DAVOL and BARD are liable to Plaintiff for the intentional infliction of emotional distress in the following respect:

67. Plaintiff suffered severe emotional distress, which was a result of DAVOL's and BARD's extreme outrageous, intentional, willful, and reckless conduct in studying, designing, developing, testing, inspecting, manufacturing, producing, advertising, marketing, promoting, distributing, and/or sale of the Dulex Mesh for hernia repair surgery.

68. Plaintiff suffered severe emotional distress, which was a result of DAVOL's and BARD's extreme outrageous, intentional, willful, and reckless conduct in failing to adequately and safely design and construct an effective and safe Dulex Mesh for hernia repair surgery, in complete and reckless disregard of safety to Plaintiff.

69. Therefore, DAVOL and BARD are liable to Plaintiff.

70. DAVOL's and BARD's conduct in continuing to market, sell and distribute the Dulex Mesh after obtaining knowledge that the products were failing and not performing as represented and intended, showed complete indifference to or a conscious disregard for the safety

of others justifying an award of additional damages for aggravating circumstances in such a sum which will serve to deter DAVOL, BARD and others from similar conduct in the future.

Wherefore, Plaintiff requests a judgment against DAVOL and BARD for damages in a sum to confer jurisdiction upon this Court together with interest on that amount at the legal rate from the date of judgment until paid, for court costs and for other such relief this Court deems just and appropriate.

COUNT V
Breach of Implied Warranty

71. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

72. DAVOL and BARD sold the Dulex Mesh that was implanted in Plaintiff. DAVOL and BARD impliedly warranted to Plaintiff, her physicians and health care providers that the Dulex Mesh was of merchantable quality and safe for the use for which it was intended.

73. DAVOL and BARD knew or reasonably should have known that the Dulex Mesh at the time of sale was intended to be used for the purpose of surgically implantation into the human body for hernia repair.

74. Plaintiff, her physicians, and her health care providers reasonably relied on DAVOL's and BARD's judgment, indications and statements that the Dulex Mesh was fit for such use.

75. When the Dulex Mesh Hernia Patches were distributed into the stream of commerce and sold by DAVOL and BARD, they were unsafe for their intended use, and not of merchantable quality, as warranted by DAVOL and BARD, in that they had very dangerous propensities when used as intended and implanted into a patient's body and, as a result, could cause serious injury of harm or death to the end user.

76. As a result of DAVOL and BARD's conduct and actions, Plaintiff suffered such injuries and damages.

77. As such, Defendants DAVOL and BARD breached the implied warranty of merchantability are liable to Plaintiff for her injuries and the costs she incurred as a result from using the defective Dulex Mesh Hernia Patch.

Wherefore, Plaintiff requests a judgment against DAVOL and BARD for damages in a sum to confer jurisdiction upon this Court together with interest on that amount at the legal rate from the date of judgment until paid, for court costs and for other such relief this Court deems just and appropriate.

COUNT VI
Failure to Warn

78. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

79. In the course of business, DAVOL and BARD designed, manufactured and sold the Dulex Mesh to hospitals for hernia repair surgeries.

80. In performing Plaintiff's hernia repair surgery, the operating physician used and inserted into Plaintiff one of the Dulex Mesh that Plaintiff's hospital purchased from Defendants.

81. At the time of the design, manufacture and sale of the Dulex Mesh Hernia Patch, and more specifically at the time Plaintiff received the Dulex Mesh Hernia Patch, they were defective and unreasonably dangerous when put to their intended and reasonably anticipated use. Further, the Dulex Mesh Hernia Patches were not accompanied by proper warnings regarding significant adverse consequences associated with the Dulex Mesh Hernia Patch.

82. BARD and DAVOL failed to provide any warnings, labels or instructions of its dangerous propensities that were known or reasonably scientifically knowable at the time of

distribution. The reasonably foreseeable use of the products involved significant dangers not readily obvious to the ordinary user of the Dulex Mesh devices. BARD and DAVOL failed to warn of the known or knowable injuries associated with malfunction of the Dulex Mesh Hernia Patch, including but not limited to rupture of the patch and severe peritonitis and infection which would require subsequent surgical procedures and could result in severe injuries.

83. The dangerous and defective conditions in the Dulex Mesh Hernia Patches existed at the time they were delivered by the manufacturer to the distributor. At the time Plaintiff had her hernia repair surgery, the Dulex Mesh was in the same condition as when manufactured, distributed and sold.

84. Plaintiff did not know at the time of surgery that the Dulex Mesh placed during Plaintiff's surgery or at any time prior thereto, of the existence of the defects or dangerous propensities in the Dulex Mesh Hernia Patches.

85. Plaintiff suffered the aforementioned injuries and damages as a direct result of DAVOL and BARD's failure to warn.

86. As a direct and proximate result of BARD's and DAVOL's failure to warn, Plaintiff has suffered and will continue to suffer great pain and mental anguish.

87. As such, Defendants breached their duty to warn about known defects and are liable to Plaintiff for the injuries sustained and the costs incurred as a result of using the Dulex Mesh Hernia Patch.

88. The conduct of BARD and DAVOL in continuing to market, promote, sell and distribute the Dulex Mesh after obtaining knowledge that the products were failing and not performing as represented and intended, showed a complete indifference to or conscious disregard

for the safety of others justifying an award in such sum which will serve to deter BARD, DAVOL and others from similar conduct.

Wherefore, Plaintiff requests a judgment against DAVOL and BARD for damages in a sum to confer jurisdiction upon this Court together with interest on that amount at the legal rate from the date of judgment until paid, for court costs and for other such relief this Court deems just and appropriate.

COUNT VII
Fraud

89. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

90. In the course of business, DAVOL and BARD designed, manufactured and sold the Dulex Mesh for hernia repair surgeries.

91. At the time of the design, manufacture and sale of the Dulex Mesh Hernia Patch, and, more specifically, at the time Plaintiff received the Dulex Mesh Hernia Patch, they were defective and unreasonably dangerous when put to their intended and reasonably anticipated use. Further the Dulex Mesh was not accompanied by proper warnings regarding significant adverse consequences associated with the Dulex Mesh Hernia Patch.

92. Defendants BARD and DAVOL were aware of the dangerous and defective condition of the products and intentionally withheld this information from Plaintiff, Plaintiff's physicians, and the general public even though these significant dangers were not readily obvious to the ordinary user of the products, even after a post surgical complication had arisen.

93. BARD and DAVOL fraudulently represented to Plaintiff, Plaintiff's physicians, and the general public that the Dulex Mesh was a safe and effective product even though they were

fully aware of the dangerous and defective nature of the Dulex Mesh which likely could, and would, cause injuries such as those suffered by Plaintiff.

94. Plaintiff and Plaintiff's physicians relied upon the fraudulent misrepresentations and concealments of Defendants and allowed for the defective Dulex Mesh to be implanted.

95. As a direct and proximate result of Plaintiff's reliance on BARD's and DAVOL's fraudulent misrepresentations and concealments, Plaintiff was seriously and permanently injured.

96. As a direct and proximate result of Plaintiff's reliance on BARD's and DAVOL's fraudulent misrepresentations and concealments, Plaintiff has suffered and will continue to suffer great pain and mental anguish.

97. The conduct of BARD and DAVOL in continuing to fraudulently market, promote, sell and distribute the Dulex Mesh while fraudulently concealing knowledge that the products were failing and not performing as represented and intended, showed a complete indifference to or conscious disregard for the safety of others justifying an award in such sum which will serve to deter BARD, DAVOL and others from similar conduct.

Wherefore, Plaintiff requests a judgment against DAVOL and BARD for damages in a sum to confer jurisdiction upon this Court together with interest on that amount at the legal rate from the date of judgment until paid, for court costs and for other such relief this Court deems just and appropriate.

Wherefore, Plaintiff respectfully requests judgment in their favor and against DAVOL and BARD for such amount that is determined to be fair and reasonable, for such other relief as may be fair and reasonable under the circumstances and for their costs.

COUNT VIII
Punitive Damages

98. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

99. Defendants sold their products to healthcare providers throughout the United States without doing adequate testing to ensure that the products were reasonably safe for implantation.

100. Defendants sold their products to healthcare providers throughout the United States in spite of their knowledge that the products pose risks of degradation, infection, contracture, shrinkage, breakage, separation, tearing, splitting, and other problems, thereby causing severe and debilitating injuries suffered by the Plaintiff.

101. Defendants ignored reports from patients and healthcare providers throughout the United States and elsewhere of the products' failures to perform as intended, which lead to the severe debilitating injuries suffered by the Plaintiff. Rather than doing adequate testing to determine the cause of these injuries, or to rule out the products' designs or the processes by which the products are manufactured as the cause of these injuries, Defendants chose instead to continue to market and see the products as safe and effective.

102. Defendants knew the products were unreasonably dangerous in light of their risks of failure resulting in pain and suffering, loss of life's enjoyment, remedial surgeries and treatments in an effort to cure the conditions proximately related to the use of the products, as well as other severe injuries which are permanent and lasting in nature.

103. Defendants withheld material information from the medical community and the public in general, including the Plaintiff, regarding the safety and efficacy of the product.

104. Defendants knew and recklessly disregarded the fact that the products caused debilitating and potentially life-altering complications with greater frequency than feasible alternative methods and/or products.

105. Defendants misstated and misrepresented data, and continue to misrepresent data, so as to minimize the perceived risk of injuries caused by the products.

106. Notwithstanding the foregoing, Defendants continue to aggressively market the products to consumers, without disclosing the true risks associated with the products.

107. Defendants knew of the products' defective and unreasonably dangerous nature, but continued to manufacture, market, distribute, and sell the products so as to maximize sales and profits at the expense of the health and safety of the public, including the Plaintiff.

108. Defendants continue to conceal and/or fail to disclose to the public, including the Plaintiff, the serious complications associated with the use of the products, to ensure continued and increased sales.

109. Defendants conduct as described herein shows willful misconduct, malice, fraud, wantonness, oppression or that entire want of care which raises the presumption of conscious indifference to consequences, thereby justifying an award of punitive damages.

Wherefore, Plaintiff requests a judgment against DAVOL and BARD for punitive damages in a sum to confer jurisdiction upon this Court together with interest on that amount at the legal rate from the date of judgment until paid, for court costs and for other such relief this Court deems just and appropriate.

PRAYER FOR RELIEF

WHEREFORE, based upon the aforesaid individual counts and the Complaint as a whole, Martha Karen Jones prays as follows:

(1) For a fair, reasonable and appropriate verdict against defendants for compensatory damages;

(2) For a fair, reasonable and appropriate verdict against all defendants for punitive damages;

(3) For a fair, reasonable and appropriate verdict against defendants for all discretionary costs allowed by law;

(4) For a fair, reasonable and appropriate verdict against defendants for all post-judgment interest allowed by law;

(5) For all such other and further relief as this Court deems just and proper; and

(6) For a jury of twelve to try the issues when joined.

PLAINTIFFS REQUEST A TRIAL BY JURY ON ALL COUNTS.

Plaintiff, Martha Karen Jones

By her Attorney,

s/Jimmy W. Bilbo
JIMMY W. BILBO, BPR No. 011408
BILBO LAW OFFICE, P.C.
Attorney for Plaintiff
150 North Ocoee Street (37311)
P.O. Box 62
Cleveland, TN 37364-0191
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(423) 476-3556
(423) 476-3551 (facsimile)

UNITED STATES DISTRICT COURT

for the

Eastern District of Tennessee

Martha Karen Jones *Plaintiff(s)* v. Davol Inc. and C.R. Bard Inc. *Defendant(s)*	)	Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Davol Inc.
100 Crossings Boulevard
Warwick, Rhode Island 02886

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: JIMMY W. BILBO, BPR No. 011408
BILBO LAW OFFICE, P.C.
Attorney for Plaintiff
150 North Ocoee Street (37311)
P.O. Box 62
Cleveland, TN 37364-0191

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

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

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

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

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

Date: _____ _____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

Eastern District of Tennessee

Martha Karen Jones *Plaintiff(s)* v. Davol Inc. and C.R. Bard Inc. *Defendant(s)*	)	Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* C.R. Bard Inc.
730 Central Ave.
New Providence, N.J. 07974-1139

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: JIMMY W. BILBO, BPR No. 011408
BILBO LAW OFFICE, P.C.
Attorney for Plaintiff
150 North Ocoee Street (37311)
P.O. Box 62
Cleveland, TN 37364-0191

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

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

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

This summons for *(name of individual and title, if any)* _____

was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

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

Date: _____

_____

Server's signature

_____

Printed name and title

_____

Server's address

Additional information regarding attempted service, etc:

Print Save As... Reset

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

MARTHA KAREN JONES

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Bilbo Law Office, P.C.
150 North Ocoee Street, P.O. Box 62 (37364)
Cleveland, TN 37311

DEFENDANTS

DAVOL INC. and C.R. BARD INC.

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

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

Attorneys *(If Known)*

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

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

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

(For Diversity Cases Only)

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

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

Click here for: Nature of Suit Code Descriptions.

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

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

TORTS

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

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

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

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

PRISONER PETITIONS

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

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

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

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

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

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

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 835 Patent - Abbreviated New Drug Application
- ❒ 840 Trademark

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

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

OTHER STATUTES
- ❒ 375 False Claims Act
- ❒ 376 Qui Tam (31 USC 3729(a))
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 893 Environmental Matters
- ❒ 895 Freedom of Information Act
- ❒ 896 Arbitration
- ❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ❒ 950 Constitutionality of State Statutes

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

☒ 1 Original Proceeding ❒ 2 Removed from State Court ❒ 3 Remanded from Appellate Court ❒ 4 Reinstated or Reopened ❒ 5 Transferred from Another District *(specify)* ❒ 6 Multidistrict Litigation - Transfer ❒ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

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

Brief description of cause:
Personal Injury; Product Liability

VII. REQUESTED IN COMPLAINT:

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

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ❒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE
05/11/2018

SIGNATURE OF ATTORNEY OF RECORD
/s/ Jim Bilbo

FOR OFFICE USE ONLY

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

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

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

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

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

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

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

IV. Nature of Suit. Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. Origin. Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statue.

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

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

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

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