

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE: ETHICON PHYSIOMESH FLEXIBLE COMPOSITE HERNIA MESH PRODUCTS LIABILITY LITIGATION	MDL DOCKET NO. 2728  CIVIL ACTION NO. 1:17-md-02782-RWS
THIS DOCUMENT RELATES TO ALL CASES	

**ORDER REGARDING PRODUCTION OF ETHICON PHYSIOMESH™  
FLEXIBLE COMPOSITE MESH EXEMPLARS**

WHEREAS, plaintiffs in the above-captioned MDL have made personal injury claims regarding Defendant Ethicon's PHYSIOMESH™ Flexible Composite Mesh ("PHYSIOMESH™") and have requested that Ethicon produce exemplars of PHYSIOMESH™ solely for use in this MDL;

WHEREAS, there are as of the date of this Agreed Order more than 1,500 plaintiffs who have filed lawsuits in this MDL involving PHYSIOMESH™;

WHEREAS, there is a limited number of exemplar PHYSIOMESH™ devices as PHYSIOMESH™ is no longer manufactured;

WHEREFORE, the parties hereby agree, and the Court ORDERS as follows:

IT IS AGREED AND ORDERED THAT Ethicon shall produce within thirty days of the entry of this Order to the MDL Plaintiffs' Steering Committee the following number of exemplar devices for the benefit of all plaintiffs in the MDL:

<b>PHYSIOMESH™ Product Code</b>	<b>Number of Exemplars</b>
PHY0715R	8
PHY1015V	8
PHY1515Q	8
PHY1520R	8
PHY1520V	8
PHY2025V	8
PHY2030R	8
PHY2535V	8
PHY3035R	8
PHY3050R	8

IT IS FURTHER AGREED AND ORDERED THAT Plaintiffs are permitted to conduct destructive testing of the PHYSIOMESH™ exemplars provided pursuant to this Order; however, because there are limited exemplars available to the litigants, Plaintiffs are expected to preserve some of these

exemplars so they can be used for other purposes, including at depositions, hearings, and trial.


IT IS FURTHER AGREED AND ORDERED THAT the exemplars provided pursuant to this order shall, at the sole discretion of the Plaintiffs' Steering Committee (or its designee(s)), be made available to individual plaintiff's counsel with cases in the MDL or in cases remanded from the MDL for use at depositions, hearings, trials or other purposes.

IT IS FURTHER AGREED AND ORDERED THAT the individual plaintiffs in the MDL shall not request exemplars from the Defendants and requests for additional exemplars in this MDL proceeding, if any, may be submitted only by the Plaintiffs' Steering Committee (or its designee(s)), except upon motion granted by the Court for good cause shown.

IT IS FURTHER AGREED AND ORDERED THAT the exemplars (and any remaining portions of exemplars that were subject to testing) will be returned to counsel for Ethicon at the conclusion of proceedings this MDL No. 2728.

IT IS FURTHER AGREED AND ORDERED THAT nothing in this order waives or impacts any parties' right to later seek a ruling from the Court concerning (1) production of additional exemplars, or (2) the use of any exemplar, including limits on the use of exemplars at trial.

SO ORDERED, this 18<sup>th</sup> day of Dec., 2018

  
\_\_\_\_\_  
RICHARD W. STORY  
United States District Judge