

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ANTHONY BJORNSTAD,

Plaintiff,

v.

ETHICON ENDO-SURGERY, LLC; ETHICON,
INC.; JOHNSON & JOHNSON HEALTH CARE
SYSTEMS, INC.; and JOHNSON & JOHNSON
CONSUMER, INC.,

Defendants.

NO.

COMPLAINT AND DEMAND FOR JURY TRIAL

COMPLAINT

COMES NOW the Plaintiff, Anthony Bjornstad, and brings this complaint for damages against Defendants, and in support thereof states as follows:

I. THE PARTIES

1.1. At all times material, Plaintiff Anthony Bjornstad was and is an individual residing in the State of Washington.

1.2 At all times material, Defendant Ethicon Endo-Surgery, LLC was and is an Ohio corporation with its principal place of business at 4545 Creek Road, Mail Location 11, Cincinnati, Ohio 45242. At all times material, Defendant Ethicon Endo-Surgery, LLC, has been conducting

1 business throughout the State of Washington and maintains significant, systematic and
2 continuous contacts throughout the State of Washington, but does not appear to have a
3 designated agent within the state upon whom service of process may be had for causes of action
4 arising out of such business.

5 1.3 At all times material, Defendant Ethicon, Inc., was and is an Ohio corporation with
6 its principal place of business at 4545 Creek Road, Mail Location 11, Cincinnati, Ohio 45242. At
7 all times material, Defendant Ethicon, Inc., has been conducting business throughout the State
8 of Washington and maintains significant, systematic and continuous contacts throughout the
9 State of Washington, but does not appear to have a designated agent within the state upon
10 whom service of process may be had for causes of action arising out of such business.

11 1.4 At all times material, Defendant Johnson & Johnson Health Care Systems, Inc.,
12 ("Johnson & Johnson") was and is a New Jersey corporation with its principal place of business
13 at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933. Defendant Johnson &
14 Johnson can be served with process through its Chief Executive Officer, Alex Gorsky, One
15 Johnson & Johnson Plaza, New Brunswick, New Jersey 08933. At all times material, Johnson &
16 Johnson has been conducting business throughout the State of Washington and maintains
17 significant, systematic and continuous contacts throughout the State of Washington, but does
18 not appear to have a designated agent within the state upon whom service of process may be
19 had for causes of action arising out of such business.

20 1.5 At all times material Defendant Johnson & Johnson Consumer, Inc., ("Johnson &
21 Johnson Consumer") was and is a New Jersey corporation with its principal place of business at
22 One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933. Defendant Johnson &
23 Johnson Consumer can be served with process through its Chief Executive Officer, Alex Gorsky,
24 One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933. At all times material,
25 Defendant Johnson & Johnson Consumer, Inc. has been conducting business throughout the
26 State of Washington and maintains significant, systematic and continuous contacts throughout

1 the State of Washington, but does not appear to have a designated agent within the state upon
2 whom service of process may be had for causes of action arising out of such business.

3
4 **II. JURISDICTION AND VENUE**

5 2.1 The Court has jurisdiction over this civil action pursuant to 28 U.S.C. § 1332(a),
6 inasmuch as the amount in controversy exceeds \$75,000, exclusive of interest and costs, and
7 Plaintiff is a citizen of a different state than one or more of Defendants.

8 2.2 Venue in this district for pretrial proceedings in this civil action is proper under 28
9 U.S.C. § 1391, inasmuch as a substantial part of the events or omissions giving rise to the claim
10 occurred in this district.

11 2.3 At all times material, Defendant Ethicon Endo-Surgery, LLC, has been in the
12 business of the researching, developing, selling, and marketing of surgical staplers and staples.
13 At all times material, Defendant Ethicon Endo-Surgery, LLC, has been in the business of and did
14 design, research, manufacture, test, advertise, promote, market, sell, and distribute the surgical
15 stapler and staples that constitute the basis of this lawsuit in the State of Washington. This Court
16 has personal jurisdiction over Defendant Ethicon Endo-Surgery, LLC, because Defendant has
17 submitted itself to the jurisdiction of this Court by engaging in conduct in the State of
18 Washington as set forth in this Complaint.

19 2.4 At all times material, Defendant Ethicon, Inc., has been in the business of the
20 researching, developing, selling, and marketing of surgical staplers and staples. At all times
21 material, Defendant Ethicon, Inc., has been in the business of and did design, research,
22 manufacture, test, advertise, promote, market, sell, and distribute the surgical stapler and
23 staples that make the basis of this suit in the State of Washington. This Court has personal
24 jurisdiction over Defendant Ethicon, Inc., because Defendant has submitted itself to the
25 jurisdiction of this Court by engaging in conduct in the State of Washington as set forth in this
26 Complaint.

2.5 At all times material, Defendant Johnson & Johnson has been the parent company
of Ethicon Endo-Surgery, LLC, and Ethicon Inc. and, as part of its business, Johnson & Johnson

1 and its "family of companies" has been involved in the research, development, sales, and
 2 marketing of surgical staplers and staples. At all times material, Defendant Johnson & Johnson
 3 has been in the business of and did design, research, manufacture, test, advertise, promote,
 4 market, sell, and distribute the surgical stapler and staples that make the basis of this suit in the
 5 State of Washington. This Court has personal jurisdiction over Defendant Johnson & Johnson
 6 because Defendant has submitted itself to the jurisdiction of this Court by engaging in conduct
 7 in the State of Washington as set forth in this Complaint.

8 2.6 At all times material, Defendant Johnson & Johnson Consumer has been the
 9 parent company of Ethicon, Ethicon Endo-Surgery, LLC, and Ethicon Inc. and, as part of its
 10 business, Johnson & Johnson Consumer and its "family of companies" has been involved in the
 11 research, development, sales, and marketing of surgical staplers and staples. At all times
 12 material, Defendant Johnson & Johnson has been in the business of and did design, research,
 13 manufacture, test, advertise, promote, market, sell, and distribute the surgical stapler and
 14 staples that make the basis of this suit in the State of Washington. This Court has personal
 15 jurisdiction over Defendant Johnson & Johnson Consumer, Inc. because Defendant has
 16 submitted itself to the jurisdiction of this Court by engaging in conduct in the State of
 17 Washington as set forth in this Complaint.

18 2.7 Defendants Ethicon Endo-Surgery, LLC, and Ethicon Inc., Johnson & Johnson
 19 Health Care Systems, Inc., and Johnson & Johnson Consumer, Inc. shall be referred to herein
 20 individually by name or jointly as the "Johnson & Johnson Defendants."

21 III. FACTS

22 3.1 On March 22, 2018, Allison J. Porter, M.D. undertook to perform laparoscopic
 23 sigmoid colectomy surgery to remove a malignant neoplasm from Plaintiff's sigmoid colon.
 24 During the surgery, the malignant neoplasm was successfully removed, and hemostasis of the
 25 colon was achieved following the removal of the malignant neoplasm from the colon.

26 3.2 Dr. Porter then began to move on to the resection portion of the surgery and,
 during the resection process, in the words of Dr. Porter ... "The staple gun misfired." Dr. Porter

1 stated in the "Operative Report"... "The EEA stapler was inserted into the rectum and connected
 2 to the anvil laparoscopically. The stapler was fired and carefully removed. Both donuts were
 3 intact, however, about half the staples had not deployed and the anastomosis was not intact.
 4 Insertion of a rectal sizer revealed that the rectal stump was wide open, as was the colon.
 5 Therefore, the decision was made to convert to an open procedure."

6 3.3 Later in the "Operative Report," Dr. Porter stated: "It was at this point the decision
 7 was made to abort the plan for repeating the anastomosis and created an end colostomy."

8 3.4 Dr. Porter has identified the surgical stapler and staples she used during Plaintiff's
 9 laparoscopic sigmoid colectomy surgery as Ethicon products. Ethicon surgical staplers and
 10 staples are designed, manufactured, marketed and sold by Ethicon Endo-Surgery, LLC, and/or
 11 Ethicon Inc.

12 3.5 The failure of the surgical stapler and staples to properly close Plaintiff's colon
 13 resulted in a number of complications, including:

- 14 a. the need to convert from a less invasive laparoscopic procedure to an open low
- 15 anterior resection surgical procedure;
- 16 b. colostomy takedown surgery on June 10, 2019, which had to be converted to an
- 17 ileostomy due to the complications from his March 22, 2018 surgery; and
- 18 c. ileostomy closure surgery.

19 **IV. CLAIMS PURSUANT TO THE WASHINGTON PRODUCT LIABILITY ACT**

20 Pursuant to the Washington Product Liability Act, Chapter 7.72 RCW (the "WPLA"),
 21 Plaintiff brings the following claims:

22 4.1 It was entirely foreseeable and well-known to the Johnson & Johnson
 23 Defendants that incidents involving its surgical staplers and staples such as occurred herein
 24 would on occasion take place in the ordinary, anticipated and intended use of said devices.

25 4.2 The Johnson & Johnson Defendants defectively designed, manufactured,
 26 assembled and marketed the surgical stapler and staples in question and so are strictly liable for
 Plaintiff's damages.

1 4.3 The surgical stapler is defective because the Johnson & Johnson Defendants failed
2 to provide adequate warnings and/or instructions regarding the defective conditions and/or the
3 proper use of the stapler and/or staples and so are strictly liable for Plaintiff's damages.

4 4.4 The Johnson & Johnson Defendants breached the implied warranties of
5 merchantability and fitness for a particular purpose, and so are liable for Plaintiff's damages.

6 4.5 The Johnson & Johnson Defendants were negligent in the design, manufacture,
7 assembly and marketing of the surgical stapler and/or staples in question and so are strictly
8 liable for Plaintiff's damages.

9 4.6 Plaintiff's surgeon, Dr. Porter, used the surgical stapler and/or staples as directed
10 for their intended purpose.

11 4.7 At all times herein mentioned, the surgical stapler and/or staples used on plaintiff
12 were defective within the meaning of the WPLA and Defendants knew of the product defects.
13 Moreover, Defendants knew neither Plaintiff nor his surgeon knew or had reason to know of the
14 product defects. Neither Plaintiff nor his surgeon could have discovered the product defects
15 through the exercise of reasonable care.

16 4.8 The surgical stapler and/or staples had not been materially altered or modified
17 prior to being used on Plaintiff.

18 4.9 At all times material, the Johnson & Johnson Defendants were acting through their
19 employees and/or agents who were within the course and scope of their employment and/or
20 agency for one or all of the Defendants. The Johnson & Johnson Defendants are therefore
21 equally liable under the doctrine of *Respondeat Superior* and/or principles of agency for all
22 actions of their employees and/or agents.

23 4.10 The Johnson & Johnson Defendants' acts and/or omissions were, separately and
24 collectively with the acts and omissions of other Defendants named herein, a producing and/or
25 proximate cause of Plaintiff's damages.
26

V. DAMAGES

5.1 As a direct and proximate result of Defendants' aforementioned actions and breach of duties, Plaintiff Anthony Bjornstad has been injured and damaged, including, but not limited to, repeated medical hospitalizations and medical procedures, past and future medical expenses, past and future lost wages, past and future diminished earning capacity, past and future pain and suffering, both physical and mental, past and future impairment of the ability and capacity to enjoy life and its pleasures, past and future disfigurement, and all other damages may be recoverable under Washington law.

5.2 Plaintiff seeks pre-judgment and post-judgment interest from the earliest dates and at the highest legal rates allowed by law.

5.3 Plaintiff seeks compensation for his actual damages, in an amount to be determined by the trier-of-fact at trial.

VI. LIMITED PHYSICIAN/PATIENT PRIVILEGE WAIVER

6.1 Plaintiff only waives the physician-patient privilege to the extent required under RCW 5.60.060(4)(b), and he does not waive or release any other rights or privileges he possesses, including those related to the physician-patient relationship, other than the privilege as set forth in the statute.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, by way of damages in such amounts as might be proven at the time of trial and determined by the trier-of-fact as reasonable and just under the evidence, as well as for costs and disbursements incurred herein, and for such other and further relief as the court may deem just and proper.

JURY DEMAND

Plaintiff requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

1 Respectfully submitted this 23rd day of October 2019.

2 **DIAMOND MASSONG, PLLC**

3 /s/ Maria S. Diamond

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