

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

|                              |   |                |
|------------------------------|---|----------------|
| ROBERT ASHMORE,              | § |                |
| Plaintiff,                   | § |                |
|                              | § |                |
| V.                           | § |                |
|                              | § | C.A. NO. _____ |
| ETHICON ENDO-SURGERY, INC.,  | § |                |
| ETHICON, INC., JOHNSON &     | § |                |
| JOHNSON HEALTH CARE SYSTEMS, | § |                |
| INC., and JOHNSON & JOHNSON  | § |                |
| CONSUMER, INC.,              | § |                |
| Defendants.                  | § |                |

**PLAINTIFF’S ORIGINAL COMPLAINT**

COMES NOW Robert Ashmore, (“Plaintiff”), and files this, original complaint, complaining of Ethicon Endo-Surgery, Inc., Ethicon, Inc., Johnson & Johnson Health Care Systems, Inc., and Johnson & Johnson Consumer, Inc. (“Defendants”), and for his cause of action would respectfully show the following:

**THE PARTIES**

1. Plaintiff Robert Ashmore is an individual who resides in Marshall, Texas.
2. Defendant Ethicon Endo-Surgery, Inc. is an Ohio corporation with its principal place of business at 1125 Bear Tavern Road, Titusville, New Jersey 08560. At all times relevant to this cause of action, Ethicon Endo-Surgery, Inc., has been conducting business throughout the State of Texas and the Defendant maintains significant, systematic and continuous contacts throughout the State of Texas, including Harrison County, Texas. It may be served with process by service is Registered Agent C.T. Corporation System at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

3. Defendant Ethicon, Inc. is a New Jersey corporation with its principal place of business at Somerville, New Jersey. At all times relevant to this cause of action, Ethicon, Inc. has been conducting business throughout the State of Texas and the Defendant maintains significant, systematic and continuous contacts throughout the State of Texas, including Harrison County, Texas. It may be served with process by service is Registered Agent C.T. Corporation System at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

4. Defendant Johnson & Johnson Health Care Systems, Inc. (“Johnson & Johnson”) is a Texas foreign corporation with its principal place of business at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933. At all times relevant to this cause of action, Johnson & Johnson Health Care Systems, Inc. has been conducting business throughout the State of Texas and the Defendant maintains significant, systematic and continuous contacts throughout the State of Texas, including Harrison County, Texas. It may be served with process by service is Registered Agent C.T. Corporation System at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

5. Defendant Johnson & Johnson Consumer, Inc. (“Johnson & Johnson Consumer”) is a New Jersey corporation with its principal place of business at 1125 Bear Tavern Road, Titusville, New Jersey 08560. At all times relevant to this cause of action, Johnson & Johnson Consumer, Inc. has been conducting business throughout the State of Texas and the Defendant maintains significant, systematic and continuous contacts throughout the State of Texas, including Harrison County, Texas. It may be served with process by service is Registered Agent C.T. Corporation System at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

#### **JURISDICTION AND VENUE**

6. This Court is vested with jurisdiction over Defendants Ethicon Endo-Surgery, Inc., Ethicon, Inc., Johnson & Johnson Health Care Systems, Inc., and Johnson & Johnson Consumer,

Inc. [hereinafter referred to as “The Johnson & Johnson Defendants”], because they are corporations doing business within the State of Texas, as authorized, and at all times material hereto, was in the business of the researching, developing, selling, and marketing of surgical cutters, staplers and staples. At all times relevant hereto, these Defendants were in the business of and did design, research, manufacture, test, advertise, promote, market, sell, and distribute the surgical stapler and staples that make the basis of this suit in the State of Texas, including in Harrison County. In addition, each and all these Defendants committed a tort in the State of Texas, including Harrison County, by designing, manufacturing and selling a defective product in this state. This Court has personal jurisdiction over Defendants pursuant to Texas Revised Statutes § 13-1-124 because Defendants have submitted themselves to the jurisdiction of this Court by engaging in conduct set forth in this Complaint in the State of Texas, including in Harrison County.

7. In addition, personal jurisdiction is proper in that the Johnson & Johnson Defendants designed, manufactured, marketed and sold the specific surgical cutter, stapler and staples that were used on the Plaintiff during his surgery and which give rise to this cause of action. The marketing and sale of the surgical cutter, stapler and staples in question occurred in Texas, the surgical cutter, stapler and staples were used on Robert Ashmore in Texas and the surgical stapler and staples failed and caused his injuries in Texas.

8. Pursuant to 28 U.S.C. §1332, this Court has original jurisdiction in this matter as the amount in controversy exceeds \$75,000, exclusive of interest and costs, and the matter is between citizens of different states, and under the doctrine of supplemental jurisdiction. This Court has subject-matter jurisdiction over the matters raised by this lawsuit pursuant to 28 U.S.C. § 1367 because the injuries which occurred to Plaintiff occurred within this district.

### **FACTS**

9. On or about February 22, 2019, Robert Ashmore underwent a low anterior resection and umbilical hernia repair performed by Dr. Gordon Alcox at Christus Good Shepherd Medical Center in Marshall, Texas. During the procedure, use of the Ethicon Stapler failed and resulted in an incomplete anastomosis which resulted in a bowel leak that required additional repair.

10. On or about March 1, 2019, Robert Ashmore suffered an anastomotic leak and underwent resection of low anterior anastomosis, colostomy placement, and over sewing of rectal stump performed by Dr. Gordon Alcox at Christus Good Shepherd Medical Center in Marshall, Texas.

11. The failure of the Ethicon Surgical Stapler resulted in significant injuries with hospitalization that required diverting colostomy. These injuries will require additional medical care and significantly impair Robert Ashmore's overall function.

### **CAUSES OF ACTION AGAINST JOHNSON & JOHNSON DEFENDANTS**

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

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

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

15. Johnson & Johnson Defendants breached the implied warranties of merchantability and fitness for a particular purpose, and so are liable for the Plaintiff's damages under RCW.

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

17. At all times relevant herein, Plaintiff will show that Johnson & Johnson Defendants were acting through employees or agents who were within the course and scope of their employment or agency for one or all of the Defendants. Johnson & Johnson Defendants are therefore equally liable under the doctrine of *Respondeat Superior* and/or principles of agency for all of actions of its employees or agents.

18. Johnson & Johnson Defendants' acts and/or omissions were, separately and collectively with the acts and omissions of other Defendants named herein, a producing and/or proximate cause of the Plaintiff's damages.

### **DAMAGES**

19. As a result of the occurrence, Plaintiff Robert Ashmore has incurred and suffered the following damages, among others, for which he seeks recovery:

- a. pain and suffering in the past;
- b. pain and suffering in the future;
- c. medical expenses in the past;
- d. medical expenses in the future;
- e. loss of earning capacity in the past;
- f. loss of earning capacity in the future;
- g. physical and mental incapacity in the past;

- h. physical and mental incapacity in the future;
- i. disfigurement in the past;
- j. disfigurement in the future;
- k. mental anguish in the past; and
- l. mental anguish in the future.

20. Plaintiff, therefore, seeks compensation from the Court and jury for his actual damages, in an amount to be determined by the jury.

### **EXEMPLARY DAMAGES**

21. The actions of the Johnson & Johnson Defendants when viewed objectively involved an extreme degree of risk, considering the probability and magnitude of potential harm to Plaintiff and Defendants had actual, subjective awareness of the risk, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Plaintiff herein, and as such constitute gross negligence (malice) as the term is defined by Texas law and, therefore, Plaintiff is entitled to exemplary damages.

### **PRE-JUDGMENT AND POST-JUDGMENT INTEREST**

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

### **JURY DEMAND**

23. Plaintiff respectfully requests a trial by jury and submits the appropriate jury fee to the Court this day.

### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays and requests that the Defendants be cited to appear and answer herein and upon final trial hereof, he take, have and

recover, of and from the Defendants, the above damages, costs of Court, pre-judgment and post-judgment interest, and for such other and further relief to which he may show herself justly entitled.

Dated: March 19, 2020

Respectfully submitted,

By: /s/ T. Micah Dortch

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