

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

FRANCIS X. JOYCE	)	
and BELINDA JOYCE,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No: 4:15-cv-468
	)	
DAVOL INC.	)	JURY TRIAL DEMANDED
	)	
and	)	
	)	
C.R. BARD INC.	)	
	)	
Defendants.	)	

**COMPLAINT**  
**COUNT I - STRICT LIABILITY-PRODUCT DEFECT**

Plaintiff Francis X. Joyce, for Count I of his cause of action against defendants Davol Inc. and C.R. Bard, Inc., states as follows:

1. Defendant Davol Inc. is a Rhode Island corporation with its principal place of business in Rhode Island, and is not a Missouri citizen.
2. Defendant C.R. Bard, Inc. is a New Jersey corporation with its corporate office and principal place of business in New Jersey, and is not a Missouri citizen.
3. Plaintiffs reside and are domiciled in St. Louis County, Missouri and are Missouri citizens.
4. There is diversity of citizenship, and an amount in controversy exceeding the jurisdictional amount, within the meaning of 28 USC §1332.

5. Venue is proper under 28 USC §1391(b)(2) and divisional venue is proper under Local Rule 3-207 in that the claim for relief arose and a substantial part of the events or omissions giving rise to the claim occurred where the product was implanted and caused injury in St. Louis County, MO. It is also proper under 28 USC §1391 (c)(2) in that Defendants are subject to the Court's personal jurisdiction because of substantial and continuous contacts within this district sufficient to subject it to personal jurisdiction, consisting of medical device sales and marketing on a substantial scale.

6. This action is brought within 5 years of Plaintiff's awareness of the mesh plug as the cause of his pain, and is within 5 years of the accrual of his cause of action within the meaning of RSMO §516.100 and §516.120(4) and *Elmore v. Owens-Illinois, Inc*, 673 SW2d 434, 436 (Mo. banc 1984).

7. In the course of their business, Defendants designed, manufactured, marketed, sold and/or placed into the stream of commerce a mesh plug (Marlex Perfix Large lot # 43EDD126) for use in inguinal hernia repairs, known as the Bard PerFix Plug. This mesh plug was implanted into Plaintiff Francis X. Joyce's right inguinal area during a hernia repair performed on 12/16/05 in St. Louis County, Missouri.

8. At the time of the development, manufacture, marketing, sale, and placement into the stream of commerce by Defendants, the mesh plug was then in a defective condition unreasonably dangerous when put to a reasonably anticipated use in that the mesh plug was capable of causing inflammation, entrapment, adherence, and erosion of nearby nerves and structures, causing extreme pain within the body with reasonably anticipated use.

9. The mesh plug was being used in a manner reasonably anticipated by defendants in the surgery of 12/16/05, and thereafter as it resided in Plaintiff's body.

10. Plaintiff Francis X. Joyce was damaged as a direct result of the defective condition of the mesh plug as existed when the mesh was designed, manufactured, marketed, sold and/or placed into the stream of commerce by Defendants, in that the mesh plug over time created an inflammatory response in Plaintiff's body, entrapping nerves, eroding and sticking to nearby structures, and causing extreme pain in plaintiff, necessitating three separate surgeries. In his first surgery of 8/22/11 the surgeon found entrapment of the ilio-inguinal nerve in the mesh. In the second surgery of 10/12/11 he found erosion of the mesh plug through the deep inguinal ring. In the third surgery of 1/3/12 he found residual mesh adhered in the medial aspect of the right groin, which he had to chisel out. Plaintiff Francis X. Joyce, as a result of the mesh plug, incurred the pain and inconvenience of these surgeries, and the pain from the mesh entrapping, eroding and adhering to his nerves and structures. He has incurred incisions, nerve damage, ongoing severe pain, atrophy, medical bills and missed work. These injuries were either caused or aggravated by the defective nature of the mesh plug as alleged herein. He will suffer from pain and atrophy into the future, and may require further medical care.

**WHEREFORE**, plaintiff Francis X. Joyce prays for a judgment against Defendants Davol Inc. and CR Bard Inc. in such amount as is fair and reasonable under the circumstances, for prejudgment interest, and for costs.

**COUNT II - STRICT LIABILITY-FAILURE TO WARN**

Plaintiff Francis X. Joyce, for Count II of his cause of action against defendants Davol Inc. and C.R. Bard, Inc., states as follows:

1. The allegations of Count I are incorporated by reference.
2. At the time Defendants designed, manufactured, marketed, sold and/or placed into the stream of commerce the mesh plug, it was unreasonably dangerous when put to a reasonably anticipated use without knowledge of its characteristic in that the mesh plug, over time, was capable of causing inflammation, entrapment, adherence, and erosion of nearby nerves and structures, causing extreme pain.
3. Defendants did not give an adequate warning of this tendency of the mesh plug.
4. Defendants' failure to give an adequate warning of this tendency of the mesh plug caused or contributed to cause the damages set forth in Count I of the petition.

**WHEREFORE**, plaintiff Francis X. Joyce prays for a judgment against Defendants Davol Inc. and C.R. Bard Inc. in such amount as is fair and reasonable under the circumstances, for prejudgment interest, and for costs.

**COUNT III - PRODUCTS LIABILITY-NEGLIGENT MANUFACTURE,  
DESIGN AND FAILURE TO WARN**

Plaintiff Francis X. Joyce, for Count III of his cause of action against defendants Davol Inc. and C.R. Bard, Inc., states as follows:

1. The allegations of Count I are incorporated by reference.

2. Defendants designed, manufactured and marketed the mesh plug that injured Plaintiffs.

3. As manufactured and designed, the mesh plug, over time, was capable of causing inflammation, entrapment, adherence, and erosion of nearby nerves and structures, causing extreme pain.

4. Defendants failed to use ordinary care to manufacture and design the product to be reasonably safe so that it would not, over time, cause inflammation, entrapment, adherence, and erosion of nearby nerves and structures, and pain.

5. Defendants failed to use ordinary care to adequately warn of the risk of harm from the mesh plug, over time, causing inflammation, entrapment, adherence, and erosion of nearby nerves and structures, and pain, with reasonably anticipated use.

6. Such failures directly caused or directly contributed to cause the damages alleged in Count I.

**WHEREFORE**, plaintiff Francis X. Joyce prays for a judgment against Defendants Davol Inc. and C.R. Bard Inc. in such amount as is fair and reasonable under the circumstances, for prejudgment interest, and for costs.

#### **COUNT IV – SPOUSAL INJURY**

Plaintiff Belinda Joyce, for her cause of action against defendants Davol Inc. and C.R. Bard, Inc., states as follows:

1. The allegations of Counts I - III are incorporated by reference.
2. At all relevant time, Plaintiff Belinda Joyce was and is the lawful spouse of Plaintiff Francis X. Joyce.

3. As a direct result of the injury to her husband as alleged in Counts I – III, Plaintiff Belinda Joyce lost some of spousal support she enjoyed from her husband.

**WHEREFORE**, plaintiff Belinda Joyce prays for a judgment against Defendants Davol Inc. and C.R. Bard Inc. in such amount as is fair and reasonable under the circumstances, for prejudgment interest, and for costs.

**COFFEY & NICHOLS  
ATTORNEYS AT LAW**



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